

Supreme Court of Florida

No. SC08-1920

HOWARD CURD, et al.,
Petitioners,

vs.

MOSAIC FERTILIZER, LLC,
Respondent.

[June 17, 2010]

QUINCE, C.J.

This cause is before the Court for review of the decision of the Second District Court of Appeal in Curd v. Mosaic Fertilizer, LLC, 993 So. 2d 1078 (Fla. 2d DCA 2008). In its decision the district court ruled upon the following questions, which the court certified to be of great public importance:

DOES FLORIDA RECOGNIZE A COMMON LAW THEORY UNDER WHICH COMMERCIAL FISHERMEN CAN RECOVER FOR ECONOMIC LOSSES PROXIMATELY CAUSED BY THE NEGLIGENT RELEASE OF POLLUTANTS DESPITE THE FACT THAT THE FISHERMEN DO NOT OWN ANY PROPERTY DAMAGED BY THE POLLUTION?

DOES THE PRIVATE CAUSE OF ACTION RECOGNIZED IN SECTION 376.313, FLORIDA STATUTES (2004), PERMIT COMMERCIAL FISHERMEN TO RECOVER DAMAGES FOR

THEIR LOSS OF INCOME DESPITE THE FACT THAT THE FISHERMEN DO NOT OWN ANY PROPERTY DAMAGED BY THE POLLUTION?

Id. at 1079. We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. For the reasons explained below, we answer the questions in the affirmative and quash the decision below.

FACTS AND PROCEDURAL HISTORY

In Curd, 993 So. 2d 1078, the Second District Court of Appeal summarized the facts as follows:

According to the allegations in [Howard Curd and several other commercial fishermen's (the fishermen)] complaint, [Mosaic Fertilizer, LLC (Mosaic)] owned or controlled a phosphogypsum storage area near Archie Creek in Hillsborough County. The storage area included a pond enclosed by dikes, containing wastewater from a phosphate plant. This wastewater allegedly contained pollutants and hazardous contaminants.

The fishermen alleged that in the summer of 2004, the Hillsborough County Environmental Protection Commission and the Florida Department of Environmental Protection both warned Mosaic that the quantity of wastewater in the storage facility was dangerously close to exceeding the safe storage level. According to the complaint, on August 10, 2004, the Department of Environmental Protection warned Mosaic that a 100-foot section of the pond dike was three feet narrower than the minimum required width of 18 feet. It warned that only an inch or two of additional rain during the tropical season would raise the level of pollutants in the pond to the top of the dike. On September 5, 2004, the dike gave way and pollutants were spilled into Tampa Bay.

The fishermen claim that the spilled pollutants resulted in a loss of underwater plant life, fish, bait fish, crabs, and other marine life. They do not claim an ownership in the damaged marine and plant life, but claim that it resulted in damage to the reputation of the fishery products the fishermen are able to catch and attempt to sell. At least

implicitly, they are alleging monetary damages in the nature of lost income or profits.

The complaint included three counts. Count 1 attempted to allege a claim for statutory liability under section 376.313(3), Florida Statutes (2004). Count 2 alleged common law strict liability based upon damages resulting from Mosaic's use of its property for an ultrahazardous activity. See, e.g., Cities Serv. Co. v. State, 312 So. 2d 799 (Fla. 2d DCA 1975). Count 3 alleged a claim of simple negligence. The trial court concluded that the language in chapter 376 did not permit a claim by these fishermen for monetary losses when they did not own any real or personal property damaged by the pollution. After initially permitting the fishermen to proceed on their claims of negligence and strict liability, the trial court ultimately ruled that these claims were not authorized under the economic loss rule. The fishermen then appealed the dismissal of their entire fourth amended complaint to [the Second District].

Curd, 993 So. 2d at 1079-80.

On appeal, the Second District affirmed the trial court's order dismissing Curd's proposed class action lawsuit against Mosaic Fertilizer. See Curd, 993 So. 2d at 1079. The court held that under traditional principles of negligence the fishermen failed to state a cause of action. See id. at 1083. The court reasoned that an action in common law either through strict liability or negligence was not permitted because the fishermen did not sustain bodily injury or property damage. The strict liability and negligence claims sought purely economic damages unrelated to any damage to the fishermen's property. Accordingly, the court further reasoned that Mosaic did not owe the fishermen an independent duty of care to protect their purely economic interests. See id. at 1082-83. Additionally, in evaluating the fishermen's statutory liability claim under section 376.313(3), the

court concluded that there is no Florida precedent that permits a recovery for damages under section 376.313(3) when the party seeking the damages does not own or have a possessory interest in the property damaged by the pollution. See id. at 1084. Further, the court said that there is no express language from the Legislature stating that it intended the statute to create a wide array of claims by people indirectly affected by pollution. See id. The court also declined to read into the statute a legislative intent in section 376.313(3) to allow such economic claims based on the fishermen's unique relationship with the fish or based on the fact that the fishermen hold commercial fishing licenses. Moreover, the court declined to recognize such a right as a matter of tort law. See id. at 1085. The court was unconvinced that a special theory should be established under the common law for a narrow subset of the people who are indirectly or remotely injured by pollution. See id. at 1085-86.

Pursuant to article V, section 3, subsection (b)(4) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v), the Second District certified the questions above to be of great public importance. See Curd, 993 So. 2d at 1079. We granted review to answer the certified questions.

ANALYSIS

Statutory Cause of Action

We first address whether the private cause of action recognized in section 376.313(3), Florida Statutes (2004),¹ allows commercial fishermen to recover damages for their loss of income despite the fact that the fishermen do not own any property damaged by the pollution. Our interpretation of a statute is a purely legal matter and therefore subject to the de novo standard of review. See Kephart v. Hadi, 932 So. 2d 1086, 1089 (Fla. 2006); see also B.Y. v. Dep't of Children & Families, 887 So. 2d 1253, 1255 (Fla. 2004) (noting that the standard of appellate review on issues involving the interpretation of statutes is de novo).

When construing a statute, we strive to effectuate the Legislature's intent. See, e.g., Borden v. East-European Ins. Co., 921 So. 2d 587, 595 (Fla. 2006) ("We endeavor to construe statutes to effectuate the intent of the Legislature."); State v. J.M., 824 So. 2d 105, 109 (Fla. 2002) (noting that legislative intent is the polestar that guides a court's statutory construction analysis). To determine that intent, we look first to the statute's plain language. See Borden, 921 So. 2d at 595. We have held that "when the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." Id. (quoting Daniels v. Fla. Dep't of Health, 898

1. While the plaintiffs filed one of their causes of action under section 376.313, which provides for individual causes of action for pollution of surface and ground waters, it should be noted that section 376.205, Florida Statutes (2004), provides for individual causes of action for pollution of coastal waters and lands also.

So. 2d 61, 64 (Fla. 2005)). In reaching our conclusion that chapter 376, Florida Statutes (2004), allows a cause of action by these plaintiffs, we have construed several provisions of the chapter in pari materia and given effect to the various sections. See E.A.R. v. State, 4 So. 3d 614, 629 (Fla. 2009); McDonald v. State, 957 So. 2d 605, 610 (Fla. 2007); Zold v. Zold, 911 So. 2d 1222, 1229-30 (Fla. 2005).

Section 376.313(3), Florida Statutes (2004), provides as follows:

Except as provided in s. 376.3078(3) and (11), nothing contained in ss. 376.30-376.319 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.319. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

(Emphasis added.) The Second District Court of Appeal provided the following legislative history regarding section 376.313(3):

Chapter 376 regulates the discharge of pollution. The first portion of this chapter was enacted in 1970 as the "Oil Spill Prevention and Pollution Control Act." See ch. 70-244, Laws of Fla. The legislature expanded the reach of chapter 376 when it enacted the Water Quality Assurance Act of 1983, ch. 83-310, Laws of Fla. Section 84 of chapter 83-310 effectively created a private cause of action for damages caused by pollution. Ch. 83-310, § 84, at 1885,

Laws of Fla. This provision is currently codified in section 376.313(3).

Curd, 993 So. 2d at 1083.

The statute at issue is found within chapter 376, which is entitled “Pollutant Discharge Prevention and Removal.” Section 376.315 of this chapter provides that “[s]ections 376.30-376.319, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under ss. 376.30-376.319 and the Federal Water Pollution Control Act, as amended.” Additionally, section 376.30, which gives legislative intent regarding pollution of surface and ground waters, provides in pertinent part that the preservation of surface and ground waters “can only be served effectively by maintaining the quality of state waters in as close to a pristine condition as possible, taking into account multiple-use accommodations necessary to provide the broadest possible promotion of public and private interests.” § 376.30(1)(c), Fla. Stat. (2004) (emphasis added). Section 376.30 further provides that the Legislature found and declared that escapes of pollutants “pose threats of great danger and damage . . . to citizens of the state, and to other interests deriving livelihood from the state.” § 376.30(2)(b), Fla. Stat. (2004) (emphasis added).

We find that section 376.313(3) and the language used in section 376.30 are clear and unambiguous, and we rely solely on their plain language to discover the legislative intent. Section 376.313(3) provides that “nothing . . . prohibits any

person from bringing a cause of action . . . for all damages resulting from a discharge or other condition of pollution.” § 376.313(3).² The language of the statute allows any person to recover for damages suffered as a result of pollution.³ “Damage,” as used in chapter 376, is defined 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.” See § 376.031(5). Moreover, the Legislature intended that the statute be liberally construed. See § 376.315 (“Sections 376.30-376.319 . . . shall be liberally construed to effect the purposes set forth under ss. 376.30-376.319 and the Federal Water Pollution Control Act, as amended.”). The title of section 376.313, “Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.319,” implies that a liberal construction should be applied under these circumstances. See State v. Webb, 398 So. 2d 820, 824-25 (Fla. 1981) (holding that when determining legislative intent, due weight

2. Although the statute is phrased in the negative, stating that it does not “prohibit” any person from bringing a cause of action, it does not necessarily follow that the statute does not actively create a cause of action. See Aramark Uniform & Career Apparel, Inc. v. Easton, 894 So. 2d 20, 26 (Fla. 2004).

3. Some other state statutes provide that under similar circumstances a fisherman’s claim would be permitted. See Del. Code Ann. tit. 7, §§ 6207-08 (2001); 35 Pa. Cons. Stat. Ann. § 6018.611 (2003); R.I. Gen. Laws 1956, § 46-12.3-4 (2007).

and effect must be given to the title of the section because “the title is more than an index to what the section is about or has reference to; it is a direct statement by the legislature of its intent”).

Importantly, in Aramark, 894 So. 2d at 24, we held that section 376.313(3) creates a private cause of action by creating a damages remedy for the non negligent discharge of pollution without proof that the defendant caused it. Therefore, a defendant can be held liable even without proof that it caused the pollutive discharge, that is, the plaintiff does not have to plead or prove negligence in any form. See id. at 23-24. We noted that the following factors demonstrate that section 376.313(3) creates a cause of action for strict liability regardless of causation:

[T]he statute’s provision of a damages remedy for the non negligent discharge of pollution; the defenses provided in the statute, including the inclusion of lack of causation as an affirmative defense; and other aspects of the statute such as its title, the cumulative remedies clause and the attorney’s fees provision—when combined with the statutory directive that section 376.313(3) should be liberally construed

Id. at 26 (citing Gary K. Hunter, Statutory Strict Liability for Environmental

Contamination: A Private Cause of Action to Remedy Pollution or Mere

Legislative Jargon?, Fla. Bar J., Jan. 1998, at 50, 51). We find that some of those factors are relevant in this case and would allow commercial fishermen to recover damages for their loss of income despite the fact that the fishermen do not own any real or personal property damaged by the pollution. Section 376.313(3) provides

that “in any such suit . . . [a] person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred.” Mosaic contends that despite this language the fishermen are not entitled to economic damages because they do not own any property damaged by the pollution. First, it must be noted that under the definition of damages cited above, one can recover for damages to real or personal property but one can also recover for damages to “natural resources, including all living things.” Furthermore, section 376.313(3) states that “[t]he only defenses to such cause of action shall be those specified in s. 376.308.” Those defenses specified in section 376.308 include acts of war, acts by a governmental entity, acts of God, and acts or omissions by a third party. Because the statute does not specifically list the lack of property ownership as a defense, we find that defense, much as we found the omission of causation in Aramark, was deliberately omitted.

In sum, the Legislature has enacted a far-reaching statutory scheme aimed at remedying, preventing, and removing the discharge of pollutants from Florida’s waters and lands. To effectuate these purposes, the Legislature has provided for private causes of action to any person who can demonstrate damages as defined under the statute. There is nothing in these statutory provisions that would prevent commercial fishermen from bringing an action pursuant to chapter 376.

The Economic Loss Rule

The Second issue before this Court is whether Florida recognizes a common law theory under which commercial fishermen can recover for economic losses proximately caused by the negligent release of pollutants despite the fact that the fishermen do not own any real or personal property damaged by the pollution. Because this case is before the Court on the trial court's dismissal of Curd's fourth amended complaint, we must take all the factual allegations in his complaint as true and construe all reasonable inferences from those facts in his favor. See Florida Dept. of Health & Rehabilitative Servs. v. S.A.P., 835 So. 2d 1091, 1094 (Fla. 2002) (citing Ralph v. City of Daytona Beach, 471 So. 2d 1, 2 (Fla. 1983)). Our standard of review is de novo. See id. (citing Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co., 752 So. 2d 582, 583 (Fla. 2000)).

The Second District held that the fishermen's common law negligence and strict liability claims were barred by the economic loss rule and general tort law principles because the fishermen did not own any property damaged by the pollution. See Curd, 993 So. 2d at 1080-81. The district court found that Mosaic did not owe the fishermen an independent duty of care to protect their purely economic interests. See id. at 1082-83. Relying on a negligence principle that the law generally protects interests in the safety of person and property, the district court concluded that the fishermen failed to state a cause of action for strict liability or negligence because they had sustained no bodily injury or property

damage. See id. at 1082. Since the fishermen did not own a property interest in the fish or allege any bodily injury, the district court concluded that the fishermen's negligence and strict liability claims sought purely economic damages unrelated to any damage to the fishermen's property. Therefore, Mosaic did not owe an independent duty of care to protect the fishermen's expectation of profits. See id. at 1083.

The Second District, in finding that the economic loss rule applied to the facts of this case, attempted to explain this Court's opinion in Indemnity Ins. Co. v. American Aviation, Inc., 891 So. 2d 532 (Fla. 2004). In American Aviation we undertook a comprehensive look at the economic loss rule including its origin and scope. We clearly stated that the economic loss rule in Florida is applicable in only two situations: (1) where the parties are in contractual privity and one party seeks to recover damages in tort for matters arising out of the contract, or (2) where the defendant is a manufacturer or distributor of a defective product which damages itself but does not cause personal injury or damage to any other property. 891 So. 2d at 536.⁴

4. We also noted that even in these two situations, the economic loss rules would not prevent the bringing of an action and recovery for intentional torts, such as, fraud, conversion, intentional interference, civil theft, abuse of process, and other torts requiring proof of intent. American Aviation, 581 So. 2d at 543.

Clearly neither the contractual nor products liability economic loss rule is applicable to this situation. The parties to this action are not in contractual privity. Moreover, the defendant in this case is not a manufacturer or distributor of a defective product that has caused damage to itself. Rather we have plaintiffs who have brought traditional negligence and strict liability claims against a defendant who has polluted Tampa Bay and allegedly caused them injury. Thus, the economic loss rule does not prevent the plaintiffs from bringing this cause. The plaintiffs' causes of action are controlled by traditional negligence law, which requires proof of duty, breach, and proximate cause, and by strict liability principles.

Common Law Causes of Action

In addition to finding that the fishermen's claims were barred by the economic loss rule, the Second District also found their claims barred because "Mosaic did not owe an independent duty of care to protect the fishermen's purely economic interests—that is, their expectations of profits from fishing for healthy fish." Curd, 993 So. 2d at 1083. We hold that Mosaic did owe a duty of care to the fishermen, a duty that was not shared by the public as a whole.

As a general principle of common law negligence, some courts have not permitted recovery for purely economic losses when the plaintiff has sustained no bodily injury or property damage. See Union Oil Co. v. Oppen, 501 F.2d 558, 563

(9th Cir. 1974) (noting “the widely recognized principle that no cause of action lies against a defendant whose negligence prevents the plaintiff from obtaining a prospective pecuniary advantage”). The reasoning behind this general rule is that if courts allowed compensation for all losses of economic advantages caused by a defendant’s negligence, a defendant would be subject to claims based upon remote and speculative injuries that he could not foresee. See Oppen, 501 F.2d at 563.⁵ Courts have applied this general rule in a variety of ways. Some courts have concluded that the negligent defendant owes no duty to plaintiffs seeking compensation for such losses. See, e.g., Byrd v. English, 43 S.E. 419 (Ga. 1903); Chelsea Moving & Trucking Co. v. Ross Towboat Co., 182 N.E. 477 (Mass. 1932); Brink v. Wabash R.R., 60 S.W. 1058 (Mo. 1901). In some cases, courts have invoked the doctrine of proximate cause to deny recovery. See Byrd, 43 S.E. 419; Ross Towboat, 182 N.E. 477. Other courts have relied on the remoteness of the economic loss. See, e.g., Northern States Contracting Co. v. Oakes, 253 N.W. 371 (Minn. 1934). Consequently, the defendants were normally relieved of the burden to defend against such claims. See Oppen, 501 F.2d at 563.

5. After stating these general principles, however, the court, ultimately held that the defendants in that action, who were drilling for oil and caused vast quantities of crude oil to be released into the coastal waters of Southern California, owed a duty of care to the commercial fishermen to refrain from negligent conduct that would reasonably and foreseeably cause a diminution of the aquatic life in those waters.

Curd contends that commercial fisherman fall into a recognized exception to that general rule. Curd claims that the licensed commercial fishermen have a protectable economic expectation in the marine life that qualifies as a property right. Curd asserts that for years he and the other fishermen have been subjecting the fish, crabs, and other marine life within the polluted area to their “dominion.” Curd asserts that because the State licensed the fishermen and created an economic expectancy, the Second District erred when it concluded that the fishermen did not “own” the marine life at the time of its destruction and thus suffered no property damage. See Curd, 993 So. 2d at 1083.

In circumstances similar to this case, courts have allowed commercial fishermen to recover when the alleged injuries occurred on water as a result of activities that occurred on land. In Leo v. General Electric Co., 538 N.Y.S. 2d 844 (N.Y. App. Div. 1989), commercial fishermen brought an action against the defendant, General Electric Company, for discharging approximately 500,000 pounds of polychlorinated biphenyls (PCBs) from two of its manufacturing plants into the Hudson River. See id. at 845-46. The marine life in the Hudson River, including the striped bass, absorbed the PCBs that collected on the river floor. See id. As a result, the New York State Department of Environmental Conservation imposed a ban on the sale of striped bass fished from the affected waters, and banned the fishing of striped bass anywhere in the State for either commercial or

recreational purposes. See id. at 293. The commercial fishermen, who earned their livelihood from fishing the affected waters, claimed that the sale of striped bass accounted for a substantial part of their income and that as commercial fishermen they had a special interest in use of public waters. That special interest, they claimed, was invaded by the defendant's pollution, and they alleged that the defendant's public nuisance had and would continue to have a devastating effect upon their ability to earn a living. Accordingly, the fishermen sought damages and injunctive relief. See id.

The court agreed with the fishermen and held that the commercial fishermen did have standing to complain of the pollution of the waters from which they derived their living. See id. at 847 (citing Louisiana ex rel. Guste v. The M/V Testbank, 524 F. Supp. 1170 (E.D. La. 1981), aff'd, 728 F.2d 748 (5th Cir 1984); Pruitt v. Allied Chemical Corp., 523 F. Supp. 975 (E.D. Va. 1981); Burgess v. The M/V Tamano, 370 F. Supp. 247 (D. Me. 1973), aff'd, 559 F.2d 1200 (1st Cir. 1977); Carson v. Hercules Powder Co., 402 S.W.2d 640 (Ark. 1966); Hampton v. North Carolina Pulp Co., 27 S.E.2d 538 (N.C. 1943); Columbia River Fishermen's Protective Union v. City of St. Helens, 87 P.2d 195 (Or. 1939)). The court found that the fishermen suffered a peculiar or special harm, a diminution or loss of livelihood, which was not suffered by every person who fished the affected waters. Thus, the court determined that the fishermen's alleged harm was peculiar to them

in their capacity as commercial fishermen, and it went beyond the harm done to members of the community. See id. at 847.

Moreover, in Carson, a licensed commercial fisherman brought an action against a powder company for injunctive relief and damages. The commercial fisherman had permission of the riparian owners of the land to fish a thirty-mile stretch of Bayou Meto, a non navigable stream. The fisherman commercially sold the fish. See 402 S.W.2d at 641. The fisherman claimed that the powder company, in the operation of its plant, had polluted the stream by discharging into it phenolic materials that killed fish, created a rotten egg odor, and made the fish inedible and unsalable. See id. The Supreme Court of Arkansas held that the powder company was liable to the fisherman. The supreme court concluded that even though the powder company corrected this condition, the powder company was liable for damages for loss of profits and damage to the fisherman's business. The supreme court reasoned that the fisherman had a substantial investment in a business and that it was his only means of livelihood. Therefore, by polluting the water, the powder company prevented the operation of this business, so it became directly liable for any damage to his business and loss of profits. See id. at 642.

Additionally, in Columbia River Fishermen's Protective Union, commercial fishermen brought an action against the operators of two plants, an insulating board company and a paper company, for discharging pollution into the river. The

plaintiffs alleged that the pollution destroyed the fish, aquatic life, and its fishing nets. The plaintiffs contended that this caused irreparable injury. See 87 P.2d at 196-97. The Supreme Court of Oregon concluded that the commercial fishermen had a cause of action. See id. at 199-200. The court reasoned that the commercial fishermen had a special interest, distinct from that of the public, in fishing the rivers. In finding a cause of action, the supreme court found that deleting the fish from the rivers prevented the fishermen from pursuing their vocations and earning their livelihood. The court found a vital distinction between the rights of licensed fishermen who are accustomed to fishing in the river and the rights of other citizens of the state. See id. at 197.⁶ But see Kuehn v. Milwaukee, 53 N.W. 912, 912-14 (Wis. 1892) (holding that a fisherman had no cause of action in equity because the fisherman was only one of a large number of fishermen affected by the alleged nuisance, he had no special privilege or right to fish in Lake Michigan, and he had no property damaged by the nuisance).

6. In addition, some courts have allowed business owners to recover when the alleged injuries occurred on water as a result of activities that occurred on land. See Masonite Corp. v. Steede, 23 So. 2d 756 (Miss. 1945) (concluding that a business owner could recover a judgment against a manufacturing plant for loss of profits she claimed she would have made in her business but for the plant's discharge that killed the fish in the Pascagoula River); Hampton v. North Carolina Pulp Co., 27 S.E.2d 538 (N.C. 1943) (holding that a fishery owner had stated a cause of action for nuisance because the waste from a pulp mill had destroyed or diverted the run of the fish, which seriously injured or destroyed his business and diminished the value of his riparian property).

Some courts have also allowed commercial fishermen to recover against the polluter when both the activities and the alleged injuries occurred on water. In Louisiana ex rel. Guste, two ships collided which resulted in pollution of the waters by chemical cargo. See 524 F. Supp. at 1171. Because of the possibility that aquatic life was contaminated by the chemical, the United States Coast Guard temporarily closed a substantial number of square miles of Louisiana waterways and marshes to commercial fishermen, crabbers, oystermen, and shrimpers. See id. The commercial fishermen and other parties who used certain waters for business or recreation asserted various theories of liability, including maritime tort, and private causes of action pursuant to federal statute, the laws of the State of Louisiana, and the laws of the United States. See id. The defendants sought summary judgment on all claims for alleged economic loss, contending that the damages for which plaintiffs sought recovery were consequential results of the ships colliding in which no actual physical damage occurred. Therefore, defendants argued that the plaintiffs could not recover for mere business expectations or losses sustained solely from the negligent interference with contractual relations. See id.

The federal district court disagreed, holding that the collision of the ships and the resulting discharge of the toxic chemical “constituted a tortious invasion that interfered with the special interest of the commercial fishermen, crabbers,

shrimpers and oystermen to use those public waters to earn their livelihood and the specific pecuniary losses which can be shown to have been incurred should be recoverable.” Id. at 1174. The court reasoned that the fisherman were exercising their public right to make a commercial use of those waters. See id. (citing Burgess, 370 F. Supp. 247); see also Pruitt, 523 F. Supp. at 978 (noting that commercial fishermen were entitled to compensation for any loss of profits they could prove were caused by defendant’s negligence because the entitlements presumably arose from a constructive property interest in Chesapeake Bay’s harvestable species and the professional fishermen were entitled to recover despite the lack of any direct physical damage to their own property).

Other federal courts have held similarly. In Oppen, commercial fisherman brought an action for economic damages under a federal statute against oil companies for discharging raw crude oil over vast stretches of the coastal waters of Southern California. See 501 F.2d at 559-60. The court found that foreseeability was the crucial determinant as to whether the defendants owed a duty to the commercial fishermen to refrain from negligent conduct in their drilling operations. See id. at 568-69. Therefore, the issue that had to be addressed was “whether the defendants could reasonably have foreseen that negligently conducted drilling operations might diminish aquatic life and thus injure the business of commercial fishermen.” Id. at 569. The federal circuit court concluded that the

defendants could have reasonably foreseen that the negligently conducted drilling operations might diminish aquatic life and injure the commercial fishermen's business. See id. The court reasoned that the dangers of pollution were known to all, and that the defendants understood the risks of their business. See id. Accordingly, the federal court held that the commercial fishermen had a cause of action to prove their case, and that the defendants were under a duty to commercial fisherman to conduct their drilling and production in a reasonably prudent manner so as to avoid the negligent diminution of aquatic life. See id. at 569-70. The court further noted that the plaintiff's injury was a pecuniary loss of a particular and special nature, limited to commercial fishermen. See id. at 570.

Likewise, in Burgess, a tanker discharged approximately 100,000 gallons of oil into the waters of Casco Bay in Maine. The plaintiffs, commercial fishermen, sought to recover economic damages incurred as a result of the discharge. See 370 F. Supp. at 248. The defendant contended that the plaintiff's economic interests were not legally cognizable because none of the fishermen had any property interest in the coastal waters, marine life, or shores claimed to have been injured by the spill. See id. at 249. The federal court disagreed. Although the court recognized that the fishermen had no individual property rights with respect to the aquatic life harmed by the oil pollution, the court concluded that the fishermen could state a claim for the tortious invasion of a public right because they had a

special interest different from the general public to take fish from the coastal waters. See id. at 250. The court found that the fishermen’s injury resulted from defendants’ alleged interference with their direct exercise of the public right to fish. The court reasoned that it would be inappropriate for a person engaged in commercial fishing, who is dependent thereon for his livelihood, to be denied any right to recover for his pecuniary loss on the basis that his injury is no different from that sustained by the general public. See id.

We conclude, as did many of the courts in the cases discussed above, that the defendant owed a duty of care to the commercial fishermen, and that the commercial fishermen have a cause of action sounding in negligence. Four elements are necessary to sustain a negligence claim:

1. A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. A failure on the [defendant’s] part to conform to the standard required: a breach of the duty
3. A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as “legal cause,” or “proximate cause,” and which includes the notion of cause in fact.
4. Actual loss or damage

Clay Elec. Coop., Inc. v. Johnson, 873 So. 2d 1182, 1185 (Fla. 2003) (alterations in original) (quoting Prosser and Keaton on the Law of Torts 164-65 (W. Page Keeton ed., 5th ed. 1984)).

Under Florida law, the question of whether a duty is owed is linked to the concept of foreseeability. We have held that duties may arise from four general sources: (1) legislative enactments or administrative regulations; (2) judicial interpretations of such enactments or regulations; (3) other judicial precedent; and (4) a duty arising from the general facts of a case. Clay Elec., 873 So. 2d at 1185 (citing McCain v. Fla. Power Corp., 593 So. 2d 500, 503 n.2 (Fla. 1992)). The fourth category encompasses “that class of cases in which the duty arises because of a foreseeable zone of risk arising from the acts of the defendant.” McCain, 593 So. 2d at 503 n.2. As we have explained:

The statute books and case law . . . are not required to catalog and expressly proscribe every conceivable risk in order for it to give rise to a duty of care. Rather, each defendant who creates a risk is required to exercise prudent foresight whenever others may be injured as a result. This requirement of reasonable, general foresight is the core of the duty element.

Id. at 503.

In the present case, the duty owed by Mosaic arose out of the nature of Mosaic’s business and the special interest of the commercial fisherman in the use of the public waters. First, Mosaic’s activities created an appreciable zone of risk within which Mosaic was obligated to protect those who were exposed to harm.

Mosaic's business involved the storage of pollutants and hazardous contaminants. It was foreseeable that, were these materials released into the public waters, they would cause damage to marine and plant life as well as to human activity. See McCain, 593 So. 2d at 503 n.2. Further, the commercial fishermen had a special interest within that zone of risk, an interest not shared by the general community. See Oppen, 501 F.2d at 568. The fishermen were licensed to conduct commercial activities in the waters of Tampa Bay, and were dependent on those waters to earn their livelihood. Mosaic's activities placed the fishermen's peculiar interests directly within the zone of risk created by the presence of its facility. As a result, Mosaic was obligated to exercise prudent foresight and take sufficient precautions to protect that interest. See Kaisner v. Kolb, 543 So. 2d 732, 735 (Fla. 1989) ("Where a defendant's conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon [that] defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses.").

Here, the discharge of the pollutants constituted a tortious invasion that interfered with the special interest of the commercial fishermen to use those public waters to earn their livelihood. We find this breach of duty has given rise to a cause of action sounding in negligence. We note, however, that in order to be

entitled to compensation for any loss of profits, the commercial fishermen must prove all of the elements of their causes of action, including damages.

CONCLUSION

For the reasons set forth above, we hold that the commercial fishermen have both a statutory and common law cause of action. Accordingly, we answer the certified questions in the affirmative and quash the decision of the Second District.

It is so ordered.

PARIENTE, LEWIS, LABARGA, and PERRY, JJ., concur.
POLSTON, J, concurs in part and dissents in part with an opinion.
CANADY, J., recused.

**NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND
IF FILED, DETERMINED.**

POLSTON, J., concurring in part dissenting in part.

I respectfully concur in part and dissent in part. Although I use different reasoning, I agree with the majority's affirmative answer to the certified question of whether commercial fishermen can recover damages for their loss of income pursuant to section 376.313, Florida Statutes (2004). However, I disagree with the majority's affirmative answer to the certified question of whether, under the facts of the case, commercial fishermen can recover economic losses proximately caused by the negligent release of pollution under Florida common law.

As an initial matter, I note that the majority decides the case for a more narrow class than those bringing the suit and more narrowly than the claims they allege. Although Curd’s proposed class consists of “all fishermen and those persons engaged in the commercial catch and sale of fish,”⁷ the majority’s decision does not extend to distributors, seafood restaurants, fisheries, fish brokers, or the like whose incomes may have been affected by Mosaic’s pollution. Additionally, the majority only addresses economic harm that resulted from the depletion of marine life and the resulting inability to harvest the commercial fishermen’s usual yield—not from harm to reputation as alleged in the petitioner’s complaint and mentioned by the Second District Court of Appeal. Compare majority op. at 24 (discussing the diminution of aquatic life because of pollution) with Curd v. Mosaic Fertilizer, LLC, 993 So. 2d 1078, 1079 (Fla. 2d DCA 2008) (noting that Curd asserts damage to reputation of fishery products); Petitioner’s Fourth Amended Complaint (alleging loss of plant life, loss of fish and the resulting loss of revenue from inability to harvest fish, loss of crabs and other marine life, and damage to reputation of fishery products). Because the majority opinion does not extend to other class members beyond the commercial fishermen and does not extend to reputation damages, I do not address them.

7. Petitioner’s Fourth Amended Complaint (emphasis added).

I. STATUTORY LIABILITY

I agree with the majority that section 376.313(3) provides the commercial fishermen with a strict liability private cause of action. See Aramark Unif. & Career Apparel, Inc. v. Easton, 894 So. 2d 20, 28 (Fla. 2004) (holding that section 376.313(3) creates a strict liability cause of action).

As the Second District noted, chapter 376 contains two separately enacted antipollution laws. Curd, 993 So. 2d at 1083. The first portion of chapter 376 was enacted in 1970 as the “Oil Spill Prevention and Pollution Control Act” and is currently codified in sections 376.011 through 376.21, Florida Statutes (2004).⁸ See ch. 70-244, Laws of Fla. The 1970 enactment provides a cause of action for parties harmed by pollution of coastal waters and lands. See § 376.021, Fla. Stat. (2004) (entitled “Legislative intent with respect to pollution of coastal waters and lands”); § 376.041, Fla. Stat. (2004) (“The discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state in the manner defined by ss. 376.011-376.21 is prohibited.”).

This 1970 enactment concerns pollution of the coastal waters, and the Legislature included a restrictive definition of damages, applicable only to the 1970 enactment. Specifically, section 376.031(5), Florida Statutes (2004), defines

8. These sections are currently known as the “Pollutant Discharge Prevention and Control Act.” § 376.011, Fla. Stat. (2004).

“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.” The Legislature specified in section 376.031 that the definition only applies to sections 376.011 through 376.21, namely the 1970 enactment. See § 376.031, Fla. Stat. (2004) (“When used in ss. 376.011-376.21, unless the context clearly requires otherwise, the term . . .”).

In 1983, the Legislature expanded the reach of chapter 376 by enacting the “Water Quality Assurance Act,” which is currently codified in sections 376.30 through 376.319, Florida Statutes (2004). See ch. 83-310, Laws of Fla. While the 1970 enactment created a remedy for those harmed by the pollution of coastal waters, the 1983 enactment provides a cause of action for those harmed by pollution of ground and surface waters. See § 376.30, Fla. Stat. (2004) (entitled “Legislative intent with respect to pollution of surface and ground waters”); § 376.302(1)(a), Fla. Stat. (2004) (prohibiting the discharge of “pollutants or hazardous substances into or upon the surface or ground waters of the state”).

In contrast to the 1970 enactment, the 1983 enactment does not include a restrictive definition of damages. Instead, the 1983 enactment, which relates to ground and surface water pollution, provides for the recovery of “all damages.”

Specifically, section 376.313(3), Florida Statutes (2004) (emphasis added), states that “nothing . . . prohibits any person from bringing a cause of action . . . for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.319.”

Curd filed his statutory cause of action relating to the pollution of surface and ground water under section 376.313 of the 1983 enactment.⁹ Therefore, the “all damages” language of the 1983 enactment applies in this case, not the more restrictive definition of the 1970 enactment.

The plain meaning of “all damages” includes economic damages; and the Legislature has directed that section 376.313(3) be liberally construed. See § 376.315, Fla. Stat. (2004) (“Sections 376.30-376.319 . . . shall be liberally construed to effect the purposes set forth under ss. 376.30-376.319 . . .”). Consequently, the statute provides commercial fishermen (among others) with a private cause of action. If the statute is overly broad as suggested by the Second District,¹⁰ that is an issue for the Legislature to address.

9. The majority correctly does not address whether Curd chose to file his cause of action under the appropriate section. The issue is not before us. I note that the majority’s statutory ruling pertains to surface and ground water but the common law liability relates to the ocean.

10. See Curd, 993 So. 2d at 1084 (“[I]f this statute were given the expansive interpretation suggested by the fishermen, it would be very difficult to decide when damages were so remote that they were no longer damages.”)

II. COMMON LAW LIABILITY

I disagree with the majority's holding that those responsible for pollution of ocean waters have a common law duty to protect the purely economic interests of those negatively affected by contamination of the sea. Unlike the majority, I do not believe that under Florida common law commercial fishermen have a unique or special interest that creates a duty to protect their purely economic interest in a healthy ocean.

As the majority explains, four elements are necessary to sustain a negligence claim: duty, breach of the duty, legal causation, and actual damages. See majority op. at 22-23 (citing Clay Elec. Coop., Inc. v. Johnson, 873 So. 2d 1182, 1185 (Fla. 2003)). In 2004, this Court abrogated the traditional tort requirement of personal or property damage. See Indemnity Ins. Co. v. Am. Aviation, Inc., 891 So. 2d 532, 543 (Fla. 2004) (limiting the personal and property damage requirement to cases involving contractual privity or product defect and stating that “in general, actionable conduct that frustrates economic interests should not go uncompensated solely because the harm is unaccompanied by any injury to a person or other property”). Because the personal and property damage requirement no longer functions as a filter for unreasonable claims, the function of the duty element of negligence takes on a greater role to filter out the unwarranted claims. See Am. Aviation, 891 So. 2d at 547 (Cantero, J., concurring) (stating that the duty element

of traditional negligence should filter out undeserving claims that the personal and property damage requirement would have eliminated). Stated another way, “where the recovery of economic losses is sought on a theory of negligence, the concept of duty as a limiting principle takes on a greater importance than it does with regard to the recovery of damages for personal injury or property damage.” Onita Pac. Corp. v. Trs. of Bronson, 843 P.2d 890, 896 (Or. 1992).

Duty exists as a matter of law and generally can arise from four sources: legislative enactments, judicial interpretations of enactments, judicial precedent, or the general facts of the case. Clay Elec., 873 So. 2d at 1185. As this Court explained in McCain v. Florida Power Corp., 593 So. 2d 500, 502 (Fla. 1992), regarding the fourth category, “[t]he duty element of negligence focuses on whether the defendant’s conduct foreseeably created a broader ‘zone of risk’ that poses a general threat of harm to others.” However, a proper application of McCain after American Aviation must include an analysis of how far-reaching the duty stretches because allowing recovery must have a sensible and just stopping point. See Lemke-Wojnicki v. Kolodziej, 655 N.W.2d 212, 215 (Wis. Ct. App. 2003); see also Hamilton v. Beretta U.S.A. Corp., 750 N.E.2d 1055, 1060 (N.Y. 2001) (“[I]n determining whether a duty exists, courts must be mindful of the precedential, and consequential, future effects of their rulings, and limit the legal consequences of wrongs to a controllable degree.” (internal quotation marks

omitted)). The injury cannot be too remote from the negligence. See Kolodziaj, 655 N.W. 2d at 215; see also Lodge v. Arett Sales Corp., 717 A.2d 215, 223 (Conn. 1998) (“In every case in which a defendant’s negligent conduct may be remotely related to a plaintiff’s harm, the courts must draw a line, beyond which the law will not impose legal liability.”).

Courts have generally recognized that foreseeability in the duty context is not unlimited. See, e.g., Scott v. Fla. Dep’t of Transp., 752 So. 2d 30, 33 (Fla. 1st DCA 2000) (“It is incumbent upon the courts to place limits on foreseeability, lest all remote possibilities be interpreted as foreseeable in the legal sense.” (quoting Fla. Power & Light Co. v. Macias, 507 So. 2d 1113, 1115 (Fla. 3d DCA 1987)); Ransom v. Bethany Acad., NO. A07-1769, 2008 WL 3289853 at *2 (Minn. Ct. App. Aug. 12, 2008) (“[A]lthough foreseeability creates a duty of ordinary care, the Minnesota Supreme Court has recognized that there are limits to foreseeability.”); RK Constructors, Inc. v. Fusco Corp., 650 A.2d 153, 156 (Conn. 1994) (“Many harms are quite literally ‘foreseeable,’ yet for pragmatic reasons, no recovery is allowed.”); People Express Airlines, Inc. v. Consol. Rail Corp., 495 A.2d 107, 116 (N.J. 1985) (noting that “members of the general public, or invitees such as sales and service persons at a particular plaintiff’s business premises, or persons travelling on a highway near the scene of a negligently-caused accident . . . who are delayed in the conduct of their affairs and suffer varied economic losses,

are certainly a foreseeable class of plaintiffs” but stating that such a class would not be permitted to recover).

Additionally, it is insufficient to show that a defendant owed a duty to the world at large. See William L. Prosser, Handbook of the Law of Torts, § 36, at 166 (2d ed. 1955); Hamilton, 750 N.E.2d at 1060 (“The injured party must show that a defendant owed not merely a general duty to society but a specific duty to him or her . . .”). The purpose of the specific duty requirement is to avoid subjecting an actor to limitless liability to an indeterminate number of individuals conceivably injured by any negligence. See Hamilton, 750 N.E.2d at 1060. This Court has stated that the concept of “ ‘[d]uty’ is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection” Gracey v. Eaker, 837 So. 2d 348, 354 (Fla. 2002) (quoting William L. Prosser, Handbook of the Law of Torts, § 53, at 325-26 (4th ed. 1971)).

Duty was appropriately limited in TS & C Investments, LLC v. Beusa Energy, Inc., 637 F. Supp. 2d 370 (W.D. La. 2009), when local business owners (including truck stops, gas stations, and minimarts) brought a putative class action for economic damages sustained after an oil well blew out, causing closure of an interstate highway. The plaintiffs claimed damages for loss of business and economic opportunity. Beusa, 637 F. Supp. 2d at 373. The court concluded that

there was no independent duty to protect the claimants' economic interests. Id. at 381. Were the court to permit recovery, the argument could later be made that anytime the interstate closed due to negligent conduct, all impacted business people could seek economic damages occasioned by the interstate's closure on the grounds that drivers owed a duty to those businesses located within several miles of the interstate. Id. Even though economic injury to highway business was foreseeable, the court found recovery to be inappropriate under a duty-risk analysis. Id.

Here, the plaintiffs have suffered no personal injury. They have suffered no property damage. The only losses the commercial fishermen allege are economic in nature; and negligence claims for the recovery of economic losses must be predicated on some duty beyond the duty to exercise reasonable care to prevent foreseeable harm. See Am. Aviation, 891 So. 2d at 546 (Cantero, J., concurring) (quoting Onita Pac. Corp., 843 P.2d at 896). Defendants must have "an independent duty to protect [a] plaintiff's purely economic interests." Id. However, Mosaic had no such duty to the plaintiff; and if this Court allows commercial fishermen to recover under the foreseeability analysis in McCain, then liability will be limitless. Such expansive common law liability turns Mosaic and other similarly situated parties into insurers of the economic interests of all parties who can claim monetary loss because of pollution. The unrestricted imposition of

liability on polluters for purely economic damages could create future liability “in an indeterminate amount for an indeterminate time to an indeterminate class.” Ultramares Corp. v. Touche, 255 N.Y. 170, 179 (N.Y. 1931); see also City of Chicago v. Beretta U.S.A. Corp., 821 N.E.2d 1099, 1140 (Ill. 2004) (“[T]he economic consequences of any single accident are virtually endless.”). Therefore, denying common law recovery is appropriate.

Moreover, commercial fishermen in Florida do not have a “special” interest within the “zone of risk” the majority finds Mosaic to have created.¹¹ Rather, commercial fishermen are few among the tens of thousands of Floridians who earn their living from healthy ocean waters. For example, in 2006, beach tourism alone contributed \$24.1 billion to the state’s economy and provided 275,630 Floridians with jobs, earning them \$7.7 billion. Center for Urban & Environmental Solutions, Florida Atlantic University, Florida Visitor Study 1 (2008) (prepared for Florida

11. See majority op. at 24 (“[T]he commercial fishermen had a special interest within that zone of risk, an interest not shared by the general community.” (citing Union Oil Co. v. Oppen, 501 F.2d 558, 568 (9th Cir. 1974)). Courts, such as the Oppen court, have acknowledged the special interests of commercial fishermen while creating an exception to the economic loss rule, which generally prohibits recovery for economic damages without personal or property damage. See Oppen, 501 F.2d at 563-68. The existence of a general economic loss rule makes it possible for such courts to conclude that polluters have a duty solely to commercial fishermen without creating limitless, incidental liability for others. Because this Court abrogated the general requirement for personal or property damage in American Aviation, this option is no longer available to this Court, and the cases regarding the commercial fishermen exception cited by the majority are inapplicable.

Department of Environmental Protection, Bureau of Beaches and Coastal Systems, DEP Contract No. BS014); see also Forrest J. Bass, Calming the Storm: Public Access to Florida's Beaches in the Wake of Hurricane-Related Sand Loss, 38 Stetson L. Rev. 541, 570-71 (2009) ("Sales tax revenues, parking fees, fines, and tourism dollars are all generated from recreational public beach access to Florida's beaches. For example, beach-related tourism directly generated \$21.9 billion in 2000. This included \$700 million in sales tax revenue and provided 442,000 jobs. Nearly one-third of non-resident tourists visited Florida's beaches in 2003. Florida ranks behind only California with regard to the size of its tourism revenues. Further, more tourists visit Miami Beach each year than Yellowstone, the Grand Canyon, and Yosemite combined.") (footnotes omitted); Erika Kranz, Sand for the People: The Continuing Controversy Over Public Access to Florida's Beaches, 83 Fla. B.J., June 2009, at 11 ("Florida is known worldwide for snowy-white beaches that provide peace, quiet, and natural beauty and also anchor the tourism that constitutes an essential part of the state's economy."); State v. Osceola County Indus. Dev. Auth., 424 So. 2d 739, 740 (Fla. 1982) (stating that in 1980 tourism generated expenditures of over \$17 billion, employed 580,000 Floridians with a \$4 billion payroll, and generated state tax revenues of more than \$785 million).

Although the majority rules that the commercial fishermen's state licenses set them apart from the general population,¹² if every state-licensed Floridian has a "special" or "unique" interest, then it seems there is endless "foreseeable" liability. Commercial fishermen are a small group, among thousands of licensed Floridians, who can claim economic damages from pollution of coastal waters. For example, hotels and restaurants near the beach, seafood truck drivers, beach community realtors, and yacht salesmen are all licensed by the State to conduct commercial activities that may be negatively affected by pollution of coastal waters. See § 509.241(1), Fla. Stat. (2004) (requiring public lodging and public food service establishments to obtain licenses from the State); § 322.03(3)(b), Fla. Stat. (2004) (requiring Florida residents to obtain a commercial driver's license from the State in order to operate a commercial motor vehicle); §§ 475.15-475.161, Fla. Stat. (2004) (requiring real estate brokers and broker associates to obtain licenses from the State); § 326.004(1), Fla. Stat. (2004) (requiring yacht brokers and salesmen to obtain licenses from the State). Because the commercial fishermen have not demonstrated that Mosiac owed a specific, unique duty to protect their purely economic interests, I would disallow common law recovery in order to avoid

12. See majority op. at 24 ("The fishermen were licensed to conduct commercial activities in the waters of Tampa Bay, and were dependent on those waters to earn their livelihood.").

subjecting defendants to limitless liability to an indeterminate number of individuals conceivably injured by any negligence.

III. CONCLUSION

Although I employ different reasoning, I agree with the majority's affirmative answer to the certified question on the commercial fishermen's statutory cause of action. However, unlike the majority, I would answer the certified question on the commercial fishermen's common law cause of action in the negative. I agree with the Second District that "Mosaic did not owe an independent duty of care to protect the fishermen's purely economic interests—that is, their expectation of profits from fishing for healthy fish." Curd, 993 So. 2d at 1083.

Accordingly, I respectfully concur in part and dissent in part.

Application for Review of the Decision of the District Court of Appeal - Certified
Great Public Importance

Second District - Case No. 2D07-352

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