

Pending Approval By Governor, Companies That Rent Industrial "Special Mobile Equipment" Will No Longer Be Subject to Strict Vicarious Liability for the Actions of Their Renters

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Under a bill just passed by the Florida Legislature, owners of "special mobile equipment," such as cranes and loaders, are no longer subject to strict vicarious liability under the dangerous instrumentality doctrine for the negligence of those who lease the equipment from them. This type of equipment is commonly used in construction, as well as for cleaning up debris and damage after hurricanes. The bill now heads to the Governor's office for final action. Carlton Fields Shareholder Christine Davis testified in support of the bill before the Florida House of Representatives.

Florida's dangerous instrumentality doctrine imposes strict vicarious liability upon the owner of a dangerous instrumentality who voluntarily entrusts that vehicle to another person and that person's negligence injures a third party. This means that the owner of a dangerous instrumentality is responsible for injury or damage to a third party, even though it had nothing to do with the person's injury and did not control its use at the time of the injury.

This bill brings companies that lease special mobile equipment in line with rental car companies, which have been exempt from strict vicarious liability for the negligence of their renters since 2011 when the Florida Supreme Court held that the federal Graves Amendment preempts Florida law. The bill also responds to the Florida Supreme Court's decision in *Newton v. Caterpillar Financial Services Corp.*, 253 So. 3d 1054 (Fla. 2018), which held that a multi-terrain loader was a dangerous

instrumentality, subject to Florida's dangerous instrumentality doctrine, and that, consequently, the company that leased the loader to a debris removal company was vicariously liable for injuries caused by an agent of the debris removal company to another.

Under the new law — created by the enactment of section 768.092, Florida Statutes — the lessor of any special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or the lessee's agent, including bodily injury, death, or damage, resulting from the operation, maintenance, or use of that equipment, as long as the lease agreement requires documented proof of insurance coverage containing limits of at least \$250,000 per person and up to \$500,000 per incident for bodily injury liability and up to \$100,000 for property damage liability, or at least \$750,000 combined property damage liability and bodily injury liability.

If signed into law by the Governor, the statute will take effect on July 1, 2019.

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