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FLORIDA LAW WEEKLY
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Exclusive Remedy

Lovering v. Nickerson and The Middlesex Corporation, 36
Fla. L. Weekly D1897(5th DCA August 26, 2011).

The appellant, Lovering, appealed the Circuit Court's decision he was a statutory employee and that the defendants were immune from negligence liability. Lovering was injured when a load of barriers that employee of defendants was loading onto Lovering's truck fell. The defendants were performing work on a road construction project and Lovering was employed as a driver by a truck leasing company that contracted with Nickerson and Middlesex to haul away barriers. The Circuit Court granted a Motion for Summary Judgment filed by the defendants which argued that Lovering was barred from a negligence claim because he was an independent contractor working or performing work in the "construction industry". Thereby he was a statutory employee per F.S. § 440.11 and 440.02(15). The 5th DCA reviewed F.S. § 440.02(8), which defines "construction industry" and reversed the Circuit Court Judge's Order as the evidence of record did not support the

conclusion that Lovering was working or performing work in the construction industry.