Granted 5/17/90 SD

IN THE SUPREME COURT OF FLORIDA

CASE NO. **75,870**

FLA. BAR NO. **484113**
FLA. BAR NO. **221252**

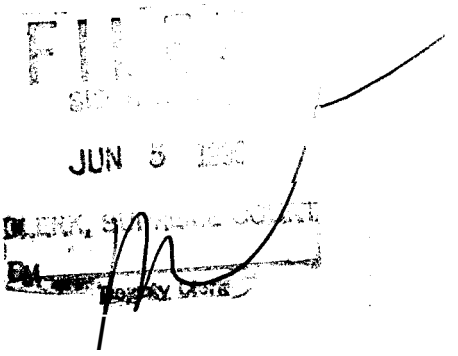
ALONZO T. RAYNOR, as Guardian of the person and property of SCOTT THOMAS RAYNOR, Incompetent,

Petitioner,

v.

EQUILEASE CORPORATION, a foreign corporation authorized to do business in the State of Florida; ALEXIS DE LA NUEZ; and GILBERT0 GARAY,

Respondents.
_____/



ON CERTIFICATION FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

AMICUS CURIAE FLORIDA MOTOR VEHICLE LEASING GROUP'S BRIEF ON THE MERITS IN SUPPORT OF RESPONDENT'S POSITION

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STATEMENT OF THE CASE AND FACTS

The discretionary jurisdiction of this Court has been invoked to review the decision of the Third District Court of Appeal, affirming a Summary Final Judgment entered in favor of Defendant, EQUILEASE CORPORATION, and against Plaintiff, ALONZO T. RAYNOR, as guardian of the person and property of SCOTT THOMAS RAYNOR, incompetent.

PETITIONER, ALONZO T. RAYNOR, as guardian of the person and property of SCOTT THOMAS RAYNOR, incompetent, the Plaintiff in the trial court below, will be referred to herein as "PETITIONER."

Respondent, EQUILEASE CORPORATION, a Defendant in the trial court below, will be referred to herein as "EQUILEASE."

Respondent, ALEXIS DE NUEZ, a Defendant in the trial court below, will be referred to herein as "NUEZ."

Amicus Curiae, FLORIDA MOTOR VEHICLE LEASING GROUP ("FMVLG"), is an association many of whose members are involved in the business of long-term leasing of motor vehicles. These commercial, long-term lessors are directly affected by the decision sought to be reviewed herein, as well as the statute at issue in this case, § 324.021(9)(a), Fla. Stat. (1985), which limits the liability of certain lessors if the conditions thereof have been met.

FMVLG submits this Brief in support of the position of EQUILEASE.[1]

The Record on Appeal will be referred to by the symbol "R." and FMVLG's Appendix will be referred to as "App."

FMVLG presents the following Statement of the Case and Facts to clarify that presented by PETITIONER.

On July 8, 1983, EQUILEASE and NUEZ entered into an agreement, entitled Automotive Lease, for a period of forty-nine (49) months. (R. 887; App. 7-12). NUEZ was given immediate possession of the tractor, as well as a purchase option upon the normal scheduled termination of the lease. (R. 895; App. 12). In fact, NUEZ prepaid the purchase option, giving EQUILEASE the sum of Four Thousand Five Hundred Dollars ($4,500.00) on August 8, 1983. (R. 895; App. 12).

Pursuant to the term of the agreement, NUEZ was solely responsible for: 1) repairing the tractor to keep it in first class mechanical condition (¶ 5); 2) maintenance of the tractor (¶ 5); 3) compliance with the inspection requirements of all states in which the tractor was to be operated (¶ 5); 4) furnishing all fuel, oil, lubrication and other materials necessary for the operation of the tractor (¶ 6); 5) keeping the painting and lettering on the tractor in good condition (¶ 6);

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[1]FMVLG will discuss, in this Brief, the issue of the lessor's non-liability for the acts of the lessee, only. FMVLG will not discuss the sale versus lease aspect. The Argument presented by FMVLG discusses the issues presented should the agreement executed between EQUILEASE and NUEZ be construed as a lease agreement, as opposed to a sale.

6) the procurement and maintenance of all licenses, license plates, permits or registrations necessary for the operation of the tractor (¶ 8); 7) payment of all personal property taxes, sales taxes, use taxes, taxes on lease rentals, ton mile taxes, sales consummation taxes (¶ 9); 8) the assumption of all risks and liabilities for injuries arising from the operation of the tractor (¶ 12(a)); 9) indemnification of EQUILEASE as a result of all losses, damages, injuries, claims, demands and expenses arising out of the operation of the tractor (¶ 12(a)); 10) insurance on the tractor (¶ 12(b)-(d)); and 11) obtaining service according to the manufacturer's warranties (R. 881-882; App. 7-8).

On November 23, 1985, SCOTT RAYNOR was allegedly involved in an accident with NUEZ. (R. 1-10). Subsequently, PETITIONER filed a Complaint against EQUILEASE, seeking damages for injuries allegedly incurred as a result of the accident. (R. 54-58). The sole basis presented by PETITIONER for recovery against EQUILEASE is that EQUILEASE "owned" the motor vehicle being operated by NUEZ. (R. 54-58).

Summary Final Judgment was entered in favor of EQUILEASE by the trial court. (R. 943). That Summary Final Judgment was affirmed by the Third District Court of Appeal on the authority and reasoning of Perry v. G.M.A.C. Leasing Corp., 549 So.2d 680 (Fla. 2d DCA 1989), and Kraemer v. General Motors Acceptance

Corp., 15 F.L.W. D81 (Fla. 2d DCA 1989).[2] (App. 13-14). The Third District Court of Appeal certified the decision as one of great public importance.[3] It is from that affirmance that PETITIONER seeks review.

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[2]These cases, contrary to PETITIONER's contentions, do not hold that prior to 1986 there was no liability on the part of the long-term lessor under the dangerous instrumentality doctrine, merely that there was not a common law right of action against the long-term lessor. Nowhere do the Perry and Kraemer decisions state that there was no caselaw established liability upon the part of the long-term lessor.

Additionally, and more important, PETITIONER fails to recognize the existence of § 324.021(9)(a), Fla. Stat. (1985), which was enacted in 1985, prior to both Perry and Kraemer. Pursuant to that subsection, EQUILEASE, under the agreement, having given NUEZ immediate possession and the purchase option, was relieved from liability as the "owner" of the tractor, as will be more fully discussed in the Argument section.

[3]The Fourth District Court of Appeal refused to certify its decision in Folmar v. World Omni Leasina, Inc., 15 F.L.W. D366 (Fla. 4th DCA 1990) on May 30, 1990. (App. 6).

ISSUES ON APPEAL

I.

WHETHER § 324.021(9)(a), FLA, STAT. (1985), EXEMPTS EQUILEASE FROM VICARIOUS LIABILITY AS THE "OWNER" OF THE TRACTOR LEASED TO NUEZ WHERE NUEZ WAS GIVEN: 1) IMMEDIATE POSSESSION, AND 2) THE RIGHT OF PURCHASE?

II.

WHETHER PERRY AND KRAEMER WERE CORRECTLY DECIDED?

SUMMARY OF ARGUMENT

Both Perry and Kraemer were decided. PETITIONER has done nothing more than select a sentence in the Perry decision, misstate and/or misinterpret its holding and then base his entire Brief on that misinterpretation. The Perry decision simply stated that the Court could find no support for the proposition that the lessor of a motor vehicle was liable, at common law, for the negligence of the lessee. The Second District Court of Appeal did not hold that a lessor had never previously been held liable prior to 1986 for the negligence of a lessee. The Second District Court was correct in its statement, although the statement was not determinative of the issues involved in either the Perry and/or Kraemer cases.

PETITIONER has totally overlooked the existence of subsection (a) of § 324.021(9), Fla. Stat., enacted in 1955. Subsection (a), a statutory codification of the law set forth in Palmer v. Evans, 81 So.2d 635 (Fla. 1955), but made applicable to lessors, relieves EQUILEASE of any liability for the negligence of the lessee, NUEZ, where EQUILEASE gave NUEZ: 1) immediate possession, and 2) the right of purchase. Subsection (a) must be read in pari materia with subsection (b), which PETITIONER acknowledges, and three District Courts of Appeal have held relieves the lessor, who complies with the provisions therein, from vicarious liability as the "owner" of a motor vehicle.

ARGUMENT

I.

§ 324.021(9)(a), FLA. STAT. (1985), EXEMPTS EQUILEASE FROM VICARIOUS LIABILITY AS THE "OWNER" OF THE TRACTOR LEASED TO NUEZ WHERE NUEZ WAS GIVEN: 1) IMMEDIATE POSSESSION, AND 2) THE RIGHT OF PURCHASE.

A. § 324.021(9)(a).

PETITIONER attempts to persuade this Court with the erroneous contention that Perry' and Kraemer were wrongly decided, in hopes of justifying an order quashing the Third District Court of Appeal's affirmance of the summary final judgment entered in favor of EQUILEASE. In so doing, PETITIONER

'This Court denied discretionary review in Perry on January 24, 1990. Discretionary review was sought on the grounds that: 1) Perry directly conflicts with Anderson v. Southern Cotton Oil Co., 74 So. 975 (Fla. 1917), Susco Car Rental System of Fla. v. Leonard, 112 So.2d 832 (Fla. 1959) and Racecon, Inc. v. Meade, 388 So.2d 266 (Fla. 5th DCA 1980); and 2) § 324.021(9)(b) is unconstitutional as violating the petitioners' access to the courts. (App. 20-30).

This Court has held that it would not accept jurisdiction to review an appellate decision which is based upon the authority of a previous appellate decision that this Court declined to review on the merits. Harrison v. Hyster Co., 515 So.2d 1279 (Fla. 1987).

> The anomaly of reviewing a decision because it was decided upon the authority of another decision which was never reviewed on the merits by this Court has caused us to conclude that we should not have accepted jurisdiction of this case . . . . Id. at 1280.

This Court has not yet determined whether jurisdiction will be accepted to review Kraemer, Case No. 75,580. Therefore, it is respectfully submitted that reviewing the case sub judice, based upon Perry and Kraemer, is inappropriate.

has totally overlooked § 324.021(9)(a)[5], Fla. Stat. (1985), which renders PETITIONER's attempted analysis of the state of the law a structurally deficient "house of cards." Subsection (a) of § 324.021(9), Florida Statutes, enacted in 1955 which, like its subsequent counterpart, subsection (b), enacted in 1986, relieves the lessor from liability as the "owner" of a motor vehicle where certain conditions have been met. Subsection (a) mandates, that where the lessor has given both immediate possession and a right of purchase of a leased vehicle to the lessee, under those circumstances, the lessee is deemed to be the "owner," not the lessor for purposes of imposing tort liability.

Section 324.021(9)(a), enacted in 1955, thirty-one years prior to the enactment of subsection (b),[6] states as follows:

> (a) Owner - A person who holds the legal title of a motor vehicle; or, in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in a conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner

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[5]Throughout his Brief, PETITIONER has failed to even acknowledge the existence of § 324.021(9)(a), Fla. Stat. By this omission, or oversight, PETITIONER has painted an inaccurate, legal scenario of the lessor's liability under the dangerous instrumentality doctrine prior to the enactment of § 324.021(9)(b) in 1986.

[6]As early as 1955, a lessor who afforded a lessee a right of purchase and an immediate right of possession was entitled not to be sued as the owner of the vehicle. Thus, it would seem that effective with the adoption of the Florida Constitution in 1968, incorporating existing statutes, such lessors had a constitutional right not to be sued.

> for the purpose of this chapter. (Emphasis added).

The agreement entered into between EQUILEASE and NUEZ gave NUEZ the right of purchase upon performance of conditions stated in the lease agreement, as well as immediate possession. In fact, NUEZ prepaid the purchase option in August of 1983, four (4) years prior to the expiration of the lease agreement. Therefore, regardless of the propriety of the decisions rendered in Perry and Kraemer, EQUILEASE is deemed not to be the "owner" of the tractor on the date of the accident, for purposes of imposing vicarious liability, pursuant to § 324.021(9)(a).

Clearly, subsection (a) is a statutory codification of the law set forth in Palmer v. Evans, 81 So.2d 635 (Fla. 1955), decided the same year that subsection (a) was enacted. Palmer held that the mere titleholder, who had transferred beneficial ownership, was not liable under the dangerous instrumentality doctrine for an automobile's negligent operation by another. Section 324.021(9)(a) expanded the law set forth in Palmer, so as to exclude lessors, who have given their lessees the rights enunciated in subsection (a), from liability. Thus, in 1955, § 324.021(9)(a) established a further exception to the dangerous instrumentality doctrine, then in existence.

It is noteworthy that the Legislature chose the disjunctive "or" in its definition of "owner" in subsection (a). For purposes of imposing tort liability, the "owner" is the legal titleholder unless there is a lessee who has been given immediate possession and the right of purchase. In that event, only the

lessee is deemed the owner. The use of "or" cannot be ignored, as every word in a statute must be given meaning and effect. Vocelle v. Knight Bros. Paper Co., 118 So.2d 664 (Fla. 1st DCA 1960).

B. CASES FROM OTHER JURISDICTIONS.

Although there are no Florida cases dealing with the exclusion of lessor liability under subsection (a), there are cases from other jurisdictions with identical or analogous statutory provisions to § 324.021(9)(a) excluding certain lessors from the definition of "owner." In each instance, no insurance requirements were placed upon the lessor prior to being excepted from the definition of "owner." In Lee v. Ford Motor Co., 595 F. Supp. 1114 (D.D.C. 1984), involving a statute identical to subsection (a), the owner/long-term lessor of a vehicle involved in an accident, was held not to be the owner as defined by the Motor Vehicle Safety Responsibility Act. (App. 1-2). The lessor was therefore held not to be vicariously liable for the vehicle's negligent operation.

> In 1956, Congress enacted the present Motor Vehicle Safety Responsibility Act, . . . adding a definition of the term owner;
>
> > [a] person who holds a legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of a condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such

> conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter. Id. at **1115**.

Ford Motor Company was held not to be the "owner" under this statutory provision, for purposes of imposing tort liability for the negligence of the lessee.

> In the present case, it is undisputed that Ford lacked "dominion and control" over the vehicle in question. The car had been provided to FCA by Ford while one of the vehicles under a long-term lease between the parties was being repaired. . . . Under the lease, title remained in Ford but authority to control and operate the vehicles was given to the lessee, FCA. Ford had no immediate right to control the use of the vehicles at the time of the accident. Id. at **1116**.

The Court imposed "the liability upon the person in a position . . . to allow or prevent the use of the vehicle . . . ." Id. This analysis closely comports with the early Florida decisions dealing with liability under the dangerous instrumentality doctrine, reiterated and adopted in Perry, supra.

Moore v. Ford Motor Credit, **420** N.W.2d 577 (Mich. App. 1988), (App. **3-5)**, is also instructive.

> "Owner" means: (a) any person, firm, association or corporation renting a motor vehicle or having exclusive use thereof, under a lease or otherwise, for a period of greater than thirty days.
>
> (b) A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in a conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then

> such conditional vendee or lessee or mortgagor shall be deemed the owner.

The Court held that although the lessor was the legal titleholder of the vehicle, the lessor was not to be deemed the "owner," as defined by statute, for purposes of imposing tort liability.

> We believe that the second part of subsection (b) qualifies the first part, so that the legal title holder of a vehicle subject to a conditional lease is not an owner for purposes of the civil liability statute. In other words, Section 37 excepts from its definition of "owner" a lessor such as defendant, and deems a lessee, here Darlene Moore, "**the** owner."
>
> * * *
>
> If the Legislature had not intended to except lessors such as defendant from the definition of "owner" then the second part of subsection (b) would not have been necessary. Every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible. Id.

The Court held that although Ford Motor Credit was the legal titleholder of the vehicle, it was not the owner, as defined by the Michigan statute, for purposes of imposing vicarious liability.

> [L]egal titleholder of a vehicle subject to a conditional lease is not an owner for purposes of the civil liability statute. In other words, Section 37 excepts from its definition of "owner" a lessor such as defendant, and deems a lessee, here Darlene Moore, "**the** owner." Id.

Siverson v. Martori, 581 P.2d 285 (Ariz. App. 1978), involves a statute identical to § 324.021(9)(a). The Court there held the identical statute defined the "owner" for both purposes

of tort liability and criminal liability for the operation of a motor vehicle.

> We do not read the definition of "owner" in A.R.S. § 28-101(30) [Florida's subsection (a)] to apply to a holder of bare legal title in the context of imposing criminal liability under A.R.S. § 28-921(A). It is inconceivable to us that the Legislature, in enacting A.R.S. § 28-101(30), intended the imposition of either civil or criminal liability on the holder of bare legal title. Id. at 289.

Witkofski v. Daniels, 198 A. 19 (Pa. 1938), deals with a statute identical to § 324.021(9)(a).

> The title to this car was in Adair Motor Company. The latter rented the car to Henry Daniels for $161.00 on or before delivery, leaving a deferred rental of $576.00, which lessee promised to pay at the office of Universal Credit Company in installments of $32.00 each month. After all payments had been made as agreed, the lessee, Henry Daniels, had the right to purchase the car for $1.00. . . . Id. at 20.
>
> The Adair Motor Company, the owner of a 1934 Ford 8 Coupe, leased that car to Henry, with the right in the latter of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in [Henry Daniels] the conditional vendee or lessee. That situation made Henry Daniels the "owner" of that car, under the provisions of Section 102 of the Act . . . . Id. at 21. (Emphasis added).

The Washington State case of Beatty v. Western Pacific Insurance Co., 445 P.2d 325 (Wash. 1968), involves a Washington state statute which provides as follows:

> RCW 46.04.380 Owner. "Owner" means a person who holds a title of ownership of a vehicle, or in the event the vehicle is subject to an agreement for the conditional sale or lease thereof with the right of purchase upon

> performance of the conditions stated in the agreement and with the immediate right of purchase vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then any such conditional vendee or lessee, or mortgagor having a lawful right of possession or use and control for a period of ten or more successive days.

The Court held that the conditional vendee fell squarely within the statute's definition of "owner" for purposes of the financial responsibility act. The conditional vendor was held not to be the "owner" for the imposition of tort liability. The Court, in so holding, reasoned that this result was just since:

> The rationale most frequently advanced for this view is that where possession of the automobile has been transferred pursuant to the conditional sales agreement, the conditional vendor no longer owns the vehicle in such a sense as will enable him to give or withhold his consent to the use of the vehicle by the vendee, and that the vendor retains title for security purposes rather than for purposes of dominion over the vendee's possession and use of the car. Id. at **331.**
>
> * * *
>
> Under the conditional sales transaction herein involved the conditional vendee, Scott, had the lawful right of possession or use and control of the automobile involved for a period in excess of ten **(10)** days. He, therefore, fell squarely within the foregoing definition and was both the "operator" and the "owner" within the contemplation of the financial responsibility act. The conditional vendor, Sutliff, holding only a security interest, does not come within the thrust of the act. Id. at **333-34.**

Cowles v. Rogers, 762 S.W.2d **414** (Ky. App. 1989), involves a similar statute to subsection (a), the only difference being that

Kentucky's statute requires a lease of one year or longer. In holding the lessee to be the "owner" of the leased motor vehicle, the Court stated:

> The rationale for the rule is that possession of the vehicle is transferred under circumstances which prevent the seller from controlling the use of the vehicle by giving or withholding consent. We believe our jurisdiction's apparent adoption of this general rule by statute is both logical and sound. Id. at 417.

Likewise, the Nevada Supreme Court in Bly v. Mid-Century Ins. Co., 698 P.2d 877 (Nev. 1985), held that a statute identical to Florida's subsection (a) imposes liability only on the conditional vendee.

Arter v. Jacobs, 234 N.Y.S. 357 (App. Div. 1929), involves a statute virtually identical to § 324.021(9)(a). The case held that the lessee of an automobile would be deemed the "owner" of the vehicle, so as to be liable for its negligent operation, where a lessor retained title, until payment was made in full, and even though the lessor was empowered to repossess the automobile in the event of the lessee's breach.

Riggs v. Gardikas, 427 P.2d 890 (N.M. 1967), involves a New Mexico statute identical to § 324.021(9)(a). That case held that where trucks were subject to conditional sales or lease contracts, the vendee/lessee, who had the immediate right of possession, would be deemed the "owner" under that state's motor vehicle act. In fact, the Court held that the lessee's judgment creditors were entitled to replevy the leased trucks to satisfy the lessee's debts.

High Point Savings and Trust Co. v. King, 117 S.E.2d 421 (N.C. 1960), also involves a statute identical to § 324.021(9)(a). The Court held that the conditional vendee, lessee or mortgagor of a motor vehicle is deemed to be the owner for the purposes of the Motor Vehicle Safety and Financial Responsibility Act, even though legal title is reposed in a third party. Liability on the part of the legal titleholder, i.e., the conditional vendor or lessor, could arise:

> Only by application of the doctrine of respondeat superior, that is, by showing the relationship of master and servant, or employer and employee, or principal and agent. The complaint does not allege facts showing any such relationship. Id. at 422 (emphasis added).

Patently, the Florida Legislature, in excepting lessors such as EQUILEASE from the definition of "owner" in § 324.021(9)(a), intended that they not be considered "owners" for purposes of imposing tort liability. Thus, under subsection (a) of § 324.021(9), EQUILEASE would not be deemed the "owner" of the tractor and would not therefore be liable for the negligence of NUEZ under the dangerous instrumentality doctrine.

C. LESSOR EXEMPTION UNDER § 324.021(9)(b).

PETITIONER freely acknowledges, in footnote 11 of his Brief, that subsection (b) of **§ 324.021(9)**[7], if applicable, would exempt EQUILEASE from liability under the dangerous instrumentality doctrine if the insurance provisions contained

[7]**Section** 324.021(9)(b), enacted in 1986, is not applicable to the instant cause arising in 1985.

therein had been met. Apparently, PETITIONER feels secure in making this acknowledgement, knowing that subsection (b) is inapplicable. However, this acknowledged exemption from liability for the lessor must likewise be applicable to the lessor who has complied with subsection (a), the counterpart to subsection (b).

Subsection (b) states:

> **Notwithstandina any other provision of the Florida Statutes or existing case law,** the lessor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than **$100,000/$300,000** bodily injury liability and $50,000 property damage liability; further, this subsection shall be applicable so long as the insurance required under such lease agreement remains in effect, **shall not be deemed the owner of said motor vehicle for the purpose of determininu financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith.** (Emphasis added.)

Therefore, while subsection (b) relieves the lessor from liability where: **1)** the requisite insurance is in effect, and 2) the lease is for one year or longer, subsection (a) provides the same relief to a lessor where, regardless of the term of the lease: **1)** the lessee is given immediate possession and **2)** the lessee is given a right of purchase. Since both subsections must be read so as to achieve a consistent goal, subsection (a) must be held to provide the same exemption to complying lessors, as does subsection (b). State v. Sullivan, **43** So.2d **438** (Fla. **1949);** State v. Fussell, **24** So.2d **804** (Fla. **1946).** Judicial

contortions to yield a different conclusion would serve no purpose except to salvage **PETITIONER's** access to a potential, deep-pocket defendant. However, access to a deep-pocket defendant is not a constitutionally protected right.

Section 324.021(9)(b) has been uniformly interpreted to relieve the lessor from liability for the negligence of the lessee by Florida's appellate courts. Folmar v. World Omni Leasing, Inc., 15 F.L.W. D366 (Fla. 4th DCA 1990), rehearing denied May 30, 1990, holds that § 324.021(9)(b) does exempt a lessor from liability for the negligent operation of the leased motor vehicle by the lessee, where the requisite insurance coverage is in place, and the lease agreement is for a period in excess of one year.

> The next argument is that section 324.021(9) exempts a lessor only from sanctions for failing to meet the financial responsibility laws related to a motor vehicle covered by liability insurance. The plaintiffs again cite section 324.021(9). They claim that the pertinent portion of that provision is "for the purpose of determining financial responsibility." The plaintiffs contend that the foregoing phrase relates only to the issue of whether the lessor is subject to the sanctions set forth in section 324.051.
>
> . . . We believe that the financial responsibility discussed in section 324.021(9) concerns financial responsibility imposed by the danaerous instrumentality doctrine, not statutory penalties for failing to provide proof of financial responsibility. Moreover, there would have been no need to enact section 324.021(9)(b) to require $100,000/$300,000 coverage if its only purpose was to exempt lessors from section 324.051 which requires $10,000/$20,000 coverage.

> We conclude that section 324.021(9) constitutes an exception to the dangerous instrumentality doctrine in the case of long-term lessors. Id. at D367. (Emphasis added).

The LESSOR is simply not liable for the vehicle's negligent operation by the LESSEE. The Fourth District Court of Appeal held that the plain language of § 324.021(9)(b) clearly reflects that it "was enacted to limit the liability of lessors under the dangerous instrumentality doctrine, and we so hold." Id. at D368.

The Second District Court of Appeal, in Perry v. G.M.A.C. Leasing Corp., 549 So.2d 680 (Fla. 2d DCA 1989), held that in a subsection (b) situation, the lessor was not to be considered the owner for purposes of imposing tort liability for the negligent acts of its lessee's driver where the lease agreement was for a period in excess of one year and the lessee had obtained the requisite insurance. In Perry, it was found that § 324.021(9)(b) mandates that a lessor, such as WOLI, shall not be deemed the owner of the motor vehicle for purposes of the dangerous instrumentality doctrine where the provisions of the statute have been met. Id.

> While, as plaintiff argues, the lease also specifically provides that the "lessor remains the owner of the vehicle," nonetheless the fact remains that the lessor retains no control over the operation of the motor vehicle. Accordingly, the lessor has under the lease essentially no more than naked legal title which is all that the above-quoted portion of the lease, which is otherwise stated to be included for federal income tax purposes, recognizes.

> "[T]here is overwhelming precedent for the proposition that the person that holds legal title to a vehicle will not always be deemed to be the 'owner' under the Motor Vehicle Safety Responsibility Act. Instead, looking to the purpose of the Act, the courts 'place the liability upon the person in a position . . . to allow or prevent the use of the vehicle. . . .'" Indeed, section 324.021(9)(b) may be viewed as enhancing the recoverability of damages from lessees by calling for minimum insurance requirements to be imposed upon lessees. **Id.** at 682.

D. THE DANGEROUS INSTRUMENTALITY DOCTRINE WAS NOT ABSOLUTE IN ITS APPLICATION PRIOR TO 1986.

Contrary to what PETITIONER would have this Court accept as true, the halls of justice will not crumble by judicial approval of either § 324.021(9)(a)'s or (b)'s exception to the dangerous instrumentality doctrine. The dangerous instrumentality doctrine is not, and has never been, absolute in its application. While all the "signposts" on the roads travelled by PETITIONER might give the impression of lessor liability, the illuminated signs on the more modern legal freeways point to exemption exits for the lessor.

PETITIONER states that he could find only one "solid" exception to a motor vehicle owner's liability under the dangerous instrumentality doctrine.[1] Fortunately, Amicus was able to locate other exceptions. The doctrine does not apply, and an owner is not liable, for injuries caused by a vehicle's negligent operation by: 1) a repairman, Castillo v. Bickley, 363 So.2d 792 (Fla. 1978); 2) a valet, Fahey v. Rafterv, 353 So.2d

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[1] The extent of PETITIONER's search must be questioned where PETITIONER did not even find subsection (a) of § 324.021(9).

903 (Fla. 4th DCA 1977); or 3) a bailee passenger who had entrusted ts operat on to a negligen driver, Devlin v. Florida Rent-A-Car, Inc., 454 So.2d 787 (Fla. 5th DCA 1984).

Florida law holds, and has so held for more than thirty years, that the transfer of the beneficial ownership of a vehicle absolves the legal titleholder, under a conditional sales contract, from tort liability. Palmer v. Evans, 81 So.2d 635 (Fla. 1955). Mere retention of the title to a motor vehicle, as security for payment of the purchase price, is insufficient to impose tort liability on the titleholder for the negligent operation of the vehicle by another. Horne v. Vic Potamkin Chevrolet. Inc., 533 So.2d 261 (Fla. 1988); Register v. Redding, 126 So.2d 289, 291 (Fla. 1st DCA 1961); Gary Fronrath Volkswaqen, Inc. v. Munsey, 532 So.2d 1296 (Fla. 4th DCA 1988).

As the Court noted in Robelo v. United Consumer's Club, Inc., 14 F.L.W. 2706 (Fla. 3d DCA 1989), an employer is not necessarily liable for injuries an employee causes when using an automobile titled in the name of the employer. Likewise, an employer is not liable as the titleholder of a vehicle, for an employee's intentional torts committed while operating the employer's vehicle. Nye v. Seymour, 392 So.2d 326 (Fla. 4th DCA 1980).

None of these exceptions require a relinquishment of control for a certain time period. Contrary to PETITIONER'S protestations, there is nothing inconceivable about exempting a lessor from liability under § 324.021(9)(a) regardless of lease

length, where the owner is relieved from liability, merely turning over his vehicle to a valet service for five minutes.

Additionally, in Kraemer, supra, the Court analoaized the long-term lessor's position to that of a conditional vendor. The Second District Court of Appeal held that the long-term lessor in effect has given up beneficial ownership to the lessee, who then becomes responsible for his own negligent acts. Interestingly, this is the same exception that was recognized in 1931, in the Florida Supreme Court case of Engleman v. Traeger, 136 So. 527 (Fla. 1931).

While PETITIONER may see the dangerous instrumentality doctrine as a heavily travelled straight road, both Florida's courts and legislature have presented the curves and off-ramps of lessor liability exemption. Thus, contrary to PETITIONER's assertions that the pre-1986 legal landscape presented a single dimension of lessor liability, subsection (a), along with the other well-recognized exceptions to the dangerous instrumentality doctrine, clearly established a different scenario. PETITIONER's attempted navigation through the status of the dangerous instrumentality doctrine, via signposts that purportedly lead only to a conclusion of lessor liability, must be rather hazardous where the roads themselves reach a contrary conclusion.

II.

PERRY AND KRAEMER WERE CORRECTLY DECIDED.

It is respectfully submitted that PETITIONER's attempts to show that the Second District Court of Appeal was "misguided" in

the Perry and Kraemer decisions, is totally devoid of merit. PETITIONER's joint discussion of these two cases as though they involved the same issues, while perhaps convenient for PETITIONER, presents a disingenuous picture of the holdings involved therein.

PETITIONER attempts to discredit Perry and Kraemer by citing to cases where lessors of motor vehicles were held liable.' These citations include Susco Car Rental System of Fla. v. Leonard, 112 So.2d 832 (Fla. 1959), which, without dispute, involved a short-term rental situation. As stated previously, this Court declined to review Perry on the merits where it was alleged that Perry was in direct conflict with Susco. The other important factor that PETITIONER fails, and/or refuses to recognize, is that neither the Perry nor Kraemer decisions state, nor infer, that the lessor of a vehicle, was never held liable for the negligence of the lessee prior to 1986. These decisions simply hold, as set forth in the explicit language of Perry, that no authority, establishing a common law riuht of action against a long-term lessor, could be found:

> Furthermore, plaintiff has not shown, other than pointing to dicta in Racecon, Inc. v. Meade, 388 So.2d 266 (Fla. 5th DCA 1980), that there ever was a common law riuht of action under the dangerous instrumentality doctrine in Florida against a long-term lessor of a motor vehicle. . . . Accordingly

'PETITIONER continually states that the Courts did not differentiate between long-term lessors and short-term renters. There is, however, no indication, in any of the cited cases, that the issue of long-term leases versus short-term rentals were ever presented to those Courts.

> and contrary to plaintiff's argument, it may be concluded that he was not deprived of a right established under Florida law to sue a lessor in these circumstances because it does not appear that such a right had been established. That is, it appears that the parameters of the common law right of action against the owner of a motor vehicle under the dangerous instrumentality doctrine had not been fully established in Florida in this regard prior to the enactment of § 324.021(9)(b) and that that section established those parameters for the first time. **Id.** at 682.[10]

Thus, in an attempt to discredit both Perry and Kraemer, PETITIONER has incorrectly assumed: 1) that Perry and Kraemer held that a lessor had never been held liable under the dangerous instrumentality doctrine for the negligence of a lessee prior to 1986, and 2) that § 324.021(9)(b) was the first Florida statute to exempt a lessor from vicarious liability. PETITIONER's Brief, built on these faulty "foundations," cannot withstand even the proverbial fairy tale "huffing and puffing."

A. PERRY.

Perry deals with § 324.021(9)(b), Fla. Stat. (1986), which is not applicable to the instant cause. Contrary to PETITIONER's assertions, Perry does not turn on the issue of beneficial ownership, or whether a lessor was liable at common law for the negligence of the lessee. Perry's primary concern was whether subsection (b) of § 324.021(9) exempted a lessor from vicarious

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[10]The discussion of the common law right of action against a lessor arose from the argument that § 324.021(9)(b) violated a right of access to courts by abolishing a common law right of action against a lessor, an argument the Second, Third and Fourth District Courts of Appeal have found to be devoid of merit.

liability for the negligence of the lessee, regardless of how or if that liability ever arose. PETITIONER attacks Perry as incorrect because prior to 1986, lessors were held liable under the dangerous instrumentality doctrine. This over-simplistic approach to demean the holding of Perry, i.e., that § 324.021(9)(b) does relieve a complying lessor for the negligence of a lessee, cannot withstand judicial scrutiny. The survival of Perry does not depend upon whether or not a lessor was held liable for the negligence of a lessee prior to 1986. Parading citations before this Court to cases where a lessor, prior to 1986, was held liable, are of no avail where neither subsection (a) nor (b) were in issue. Stated simply, PETITIONER has completely "missed the mark." The holding in Perry is not dependent upon: 1) whether or not a lessor was vicariously liable for the negligence of a lessee prior to 1986, nor 2) whether a lessor's vicarious liability, if any, is founded in common law, caselaw or statutory law. Perry simply holds that § 324.021(9)(b) renders a lessor immune for the negligence of a lessee regardless of how or in what manner that liability originally arose.

B. COMMON LAW LIABILITY.[11]

It is respectfully submitted that the Second District Court of Appeal was eminently correct in its observation of the lack of authority for the proposition that a lessor was vicariously liable at common law.[12] Section **2.01,** Florida Statutes, defines "common law" as follows:

> The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the Fourth day of July, **1776,** are declared to be in force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state.

Lessor liability did not exist prior to July **4, 1776.** White v. Holmes, **103** So. **623** (Fla. **1925).**

> There was no relation of master and servant or of principal and agent between the bailor and the bailee, but a mere bailment for hire by one engaged in the particular business of hirina automobiles without drivers to others for their own purposes.
>
> The facts of this case do not support a rule of liability on the part of the owner of the automobile. . . .

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[11] FMVLG hesitates to even present this point as FMVLG submits that regardless of how, when, if and in what manner a lessor's liability arose initially, it is totally irrelevant as to whether or not Perry and Kraemer were correctly decided. FMVLG presents this point "under protest" with no intent of dignifying PETITIONER's argument of whether a lessor was held liable prior to **1986.** It is not FMVLG's desire to spread, any further, the smoke screen that PETITIONER has allowed to veil these proceedings.

[12] **While** the dangerous instrumentality doctrine may have existed, under certain circumstances, at common law, a lessor's liability thereunder did not.

> The rules of liability stated in Anderson v. Southern Cotton Oil Co., 73 Fla. 432, 74 So. 975, . . ., and Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629, . . . have reference to the facts of those cases showing a relation of employer and employee or principal and agent.
>
> The present statutes of the state, regulating the operation of motor vehicles on the highways in the state, do not require an extension of the rule of liability applicable to owners of motor vehicles as stated in the above-cited cases. Id. at 624. (Emphasis added).

Thus, as of 1925, the date White, supra, was decided, there did not exist, on the part of the lessor, any liability under the dangerous instrumentality doctrine. Therefore, the "notion" that a lessor was liable at common law, under the dangerous instrumentality doctrine, cannot pass muster when this liability had not even been established in the first quarter of the twentieth century.[13]

In summary, "common law" liabilities were those liabilities existing as of July 4, 1776. § 2.01, Fla. Stat. However, as of 1925, no liability on the part of a lessor of a motor vehicle existed under the dangerous instrumentality doctrine.

In fact, as of 1931, mere ownership of an automobile did not definitively establish the owner's liability for the negligent operation of the automobile. Engleman v. Traeger, 136 So. 527 (Fla. 1931).

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[13]It is noteworthy that PETITIONER has failed to cite a single case to support the proposition that the LESSOR was liable at common law, under the dangerous instrumentality doctrine.

> It may be conceded that the law is to the effect that the mere fact of ownership of a vehicle will not establish a liability of the owner for injuries resulting from the misuse or negligent operation by one to whom the owner has loaned it, and that something more than ownership is ordinarily required to establish agency or the relation of master and servant between the owner and borrower. . . . nor has it been held in Florida that the mere fact that the instrumentality in question is an automobile had per se set up a new rule with regard to how the relationship of principal and agent or master and servant, and the rule of liability controlling these relationships is to be applied. We think it may still safely be affirmed that where it is souaht to hold one person responsible and civilly liable for the torts committed by another, it must be made to appear by competent evidence that the relationship of principal and agent or that of master and servant existed between the two at the time the tort was committed, and, in addition to that, that the tortious act complained of was committed in the course of the employment of the servant, or was within the scope of the agency. Id. at 529. (Emphasis added).

Therefore, in 1931, the debate went on as to whether mere ownership of an automobile, without more, imposed liability upon the owner for the vehicle's negligent operation by another.

> The rule of the common law which was originally applicable to ox carts, horse-drawn vehicles, and bicycles may still be required by our legal doctrine of "stare decisis" to be applied at this late date to the automobile and aeroplane of modern civilization: but it by no means follows that such common law must be applied to new situations with the same dearee of strict construction and narrow limitations. Such rules as this cannot just be applied to such a dangerous instrumentality in operation as an automobile or an aeroplane in exactly the same way as it would be applied to an innocuous thing such as an ox cart, horse and buggy, bicycle, or a wheel barrow.

> In this connection it is of interest to demonstrate that the weight of authority in the United States has favored many different, though varying, applications of these ancient rules of the common law when required to be considered in connection with claims of liability asserted with regard to the negligent operation of motor vehicles. In many decided cases the courts have often made a more liberal application of these rules to automobiles than they have applied to less danuerous instrumentalities. Id. at 530. (Emphasis added).

Even when liability for mere ownership of an automobile was imposed, the courts still recognized an exception in the case of a lessor/bailor.

> The only effect our holdings have is to recognize that insofar as the operation of an automobile on the highways is concerned, that the owner stands always, as a matter of law, in the relation of "superior" to those whom he voluntarily permits to use his license and to operate his automobile on the highways under it, or those whom he allows to do so with his knowledge and consent. Like all cases of this kind, there is an exception, as we have pointed out. Such exception has been recounized in the particular case where the statute'' expressly permitted a bailrnent for hire, under which the bailee was allowed to procure and operate a hired car as if he were the owner. Under this exception, all liability was transferred to him which would thus have attended his actual ownership if it had existed. Id. at **531.** (Emphasis added).

Later, "another era began and the bailor-owner of an automobile for hire lost his immunity **. . .**" Lynch v. Walker, **31** So.2d 268, 271 (Fla. **1947).** Thus, the bailor's/lessor's

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[14]**This** statute is now embodied in **§** 320.01(3) defining "owner" to be any person controlling any motor vehicle by right of lease, and **§** 320.02, which requires the lessee to obtain the vehicle registration, as does the lease in the case at bar.

liability arising from the operation of an automobile, under the dangerous instrumentality doctrine, is a creature of Florida caselaw, not Florida common law. The enactment of subsection (a) in 1955 and (b) in 1986 merely completed the circle; i.e., liability of the lessor became, under certain conditions, exactly what it was in 1925, non-existent.

The imposition of vicarious liability was originally based on possession, dominion and control. Perry, supra; Kraemer v. General Motors Acceptance Corp., 15 F.L.W. D81 (Fla. 2d DCA 1989), rehearing denied February 7, 1990.

> The rationale of each of the foregoing decisions adopts as a criteria for determining liability whether or not the person charged had possession of and dominion and control over the vehicle at the time its negligent operation caused the damages forming the subject matter of the suit. If so, liability is imposed even though the negligent operation of the vehicle was by some third person to whom it was temporarily entrusted. Martin v. Lloyd Motor Co., 119 So.2d 413, 415-16 (Fla. 1st DCA 1960). (Emphasis added).

The unifying thread running through all of these cases required something other than mere ownership prior to the imposition of liability, at common law. At common law, proving actual title was unimportant; it was only necessary "to establish who exerted such dominion" over the vehicle. Wilson v. Burke, 53 So.2d 319, 321 (Fla. 1951); Frank v. Fleming, 69 So.2d 887 (Fla. 1954).

It is respectfully submitted that to reverse Perry's holding, whereby § 324.021(9)(b) relieves the lessor from liability for the negligence of the lessee, on the sole basis

that the Court stated it could find no authority for a lessor's liability at common law, would be to ignore the forest for the trees. Perry's holding does not turn on the issue of whether or not there was common law liability on the part of the lessor, but whether subsection (b) vitiated a cause of action against the lessor, regardless of how the liability first arose.

Even had there been a common law right of action against the lessor, under the dangerous instrumentality doctrine, for the vehicle's negligent operation by a lessee, §§ 324.021(9)(a) and (b) would clearly have vitiated that right. Broward v. Broward, 117 So. 691 (Fla. 1928). This is so because even common law principles may be amended by implication. Ripley v. Ewell, 61 So.2d 420 (Fla. 1952).

> It is not necessary that a statute be in direct conflict with the common law before the latter may be superseded, inconsistency being sufficient. Id. at 421.

In re Levy's Estate, 141 So.2d 803 (Fla. 2d DCA 1962); Atlas Travel Service, Inc. v. Morelly, 98 So.2d 816 (Fla. 1st DCA 1957). Further, statutes may, by implication, change well settled common law principles. Id. Statutes take precedence over common law if the two are inconsistent. Matthews V. McCain, 170 So. 323 (Fla. 1936).

It is respectfully submitted that the focal point of Perry is not whether a lessor had been held liable for the negligence of a lessee prior to 1986. Rather, the issue was whether a lessor, who had complied with subsection (b) would be held liable thereafter.

c. KRAEMER.

In Kraemer v. General Motors Acceptance Corp., 15 F.L.W. D81 (Fla. 2d DCA 1990), the Second District Court of Appeal, once again, held that the long-term lessor was not liable as the owner for the negligent acts of the lessee. The Court expressed its opinion that, even without reference to § 324.021(9), Fla. Stat., the lessor maintained none of the indicia of beneficial ownership of the vehicle.

> The Anderson I case imposed liability upon the owner based largely upon the fact that the traffic statutes placed various duties on "owners." Similarly Florida Statutes now define the term "owner" to include conditional vendees and lessees. See §§ 316.003(26) and 324.021(9), Fla. Stat. (1985).
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> * * *
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> While this issue has not been squarely addressed in Florida, the United States District Court for the District of Columbia in Lee v. Ford Motor Co., 595 F. Supp. 1114 (U.S.D.C. 1984), decided this very issue. There, when dealing with precisely the same issue as is involved here, the federal district court ruled that liability attached to the beneficial owner, the long-term lessee, rather than to the long-term lessor who held title to the vehicle in question. See also Moore v. Ford Motor Credit Co., 420 N.W.2d 577 (Mich. App. 1988). We do not deem it necessary to rely upon Florida's traffic regulation statutes and financial responsibility laws to conclude that the record titleholder as lessor under a long-term lease is not liable for the negligence of the lessee under the dangerous instrumentality doctrine.
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> * * *
>
> In a short-term rental situation, the rental car company agrees to allow its car to be

> utilized by the renter for a short period of time, with the rental car company purchasing the tag, obtaining the registration, doing all applicable maintenance and providing insurance. The rental car company also generally determines where the car must be dropped off and whether it may be removed from the state. The only similarity between a long-term lease and a short-term rental is the fact that in both situations title is held by someone other than the driver. Title alone is not sufficient to impose liability under the danaerous instrumentality doctrine. Id. at D.82 (emphasis added).

The same indicia of beneficial ownership that the Second District Court of Appeal found to be lacking in the lessor therein, is also lacking in EQUILEASE. Section 324.021(9)(a) is nothing more than a codification of this concept. Florida's legislature, as have so many others, found the beneficial ownership analogy appropriate for certain lessors.

PETITIONER has trouble discerning a difference between a lessor's liability under a long-term lease and that of a lessor under a short-term rental. However, the realities of the situations presented by the long-term lease versus short-term rental are sufficient in themselves to exempt the long-term lessor from liability, while keeping intact the liability of the short-term renter.

It is patent that the responsibilities and obligations of the long-term lessee are quite different from those of the short-term renter. In the case **sub** judice, as in the case of Kraemer, NUEZ had the following responsibilities and obligations: 1) repairing the tractor to keep it in first class mechanical condition; 2) maintenance of the tractor; 3) compliance with the

inspection requirements of all states in which the tractor was to be operated; **4)** furnishing all fuel, oil, lubrication and other materials necessary for the operation of the tractor; **5)** keeping the painting and lettering on the tractor in good condition; **6)** the procurement and maintenance of all licenses, license plates, permits or registrations necessary for the operation of the tractor; **7)** payment of all personal property taxes, sales taxes, use taxes, taxes on lease rentals, ton mile taxes, sales consummation taxes; **8)** the assumption of all risks and liabilities for injuries arising from the operation of the tractor; **9)** indemnification to EQUILEASE as a result of all losses, damages, injuries, claims, demands and expenses arising out of the operation of the tractor; **10)** insurance on the tractor;[15] and **11)** obtaining service according to the manufacturer's warranties (App. **7-8).**

On the other hand, the short-term renter has no obligations, regarding the rented vehicle, for maintenance, repairs, obtaining

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[15]**PETITIONER** apparently contends that a requirement by a lessor that a lessee maintain insurance, dilutes the argument that the lessor does not have beneficial ownership. This requirement, PETITIONER states on page **19** of his Brief, is an exercise of control by the lessor. However, this ignores the fact that every lienholder of a motor vehicle requires the "owner" to maintain insurance until full payment. "Forced placed" insurance is not an uncommon practice among banks, etc. and is not tantamount to beneficial ownership. It is respectfully submitted that PETITIONER does not have the requisite standing to argue on behalf of short-term lessees and/or "windfall profits" to insurance companies for premiums that PETITIONER has not paid. See State v. Saiez, **49 So.2d 1125** (Fla. **1986);** Daytona Beach v. Del Percio, **476 So.2d 197** (Fla. **1985);** Osterndorf v. Turner, **426 So.2d 539** (Fla. **1982).**

license tags, registrations, insurance, or service. Additionally, in the vast majority of instances, the long-term lessee selects a vehicle, including make, model and color, as the subject of the lease. The short-term renter normally has no say in the type of vehicle to be rented, with the exception of requesting a compact, deluxe and/or luxury model. Thus, two very different situations are presented by the long-term lease versus short-term rental. The long-term lessee is "stuck" with the vehicle of his choice for the duration of the lease. The short-term renter, subject to vehicle availability, can always obtain a replacement vehicle should the rented vehicle not meet with the renter's approval.

It is respectfully submitted that it is not for this Court to determine where a short-term rental ends and a long-term lease begins. The legislature has simply analosized the lessor of a vehicle, under certain leases, to that of the seller, who relinquishes all control and dominion over the motor vehicle. This is similar to the other limitations, imposed upon the dangerous instrumentality doctrine, that PETITIONER was unable to discover. Just as the owner who delivers his vehicle to a service station, or an owner who delivers his vehicle to a valet parking service, is not held responsible for the vehicle that is out of his control, now too, the lessor who relinquishes control over its vehicle, in accordance with either subsections (a) or (b) is relieved of responsibility for injuries arising from its negligent operation.

This Court's function, it is respectfully submitted, is not to determine whether subsections (a) or (b) achieve their goal in the best manner possible. Loxahatchee Revert Environmental Control Dist. v. School Bd. of Palm Beach County, 496 So.2d 930 (Fla. 4th DCA 1986). Statutory classifications need not be perfect and need not solve all problems at once. Id.

In enacting subsections (a) and (b) of § 324.021(9), the Florida legislature recognized the similarities between a lessee and the normal run-of-the-mill owner of a motor vehicle. After all, subsection (a) is nothing more than a statutory codification of the law set forth in Palmer, cast in a more modern, commercial setting.

Should this Court construe the agreement to be a lease, as opposed to a sale, sections 324.021(9)(a) and (b), Fla. Stat., relieve EQUILEASE from liability as the owner of the tractor allegedly involved in the subject accident. No reasonable construction of these subsections could yield a contrary result. From what exact responsibilities of ownership is the lessor being relieved, if not vicarious liability?

CONCLUSION

It is respectfully submitted that the Third District Court of Appeal was correct in affirming the summary

final judgment entered in favor of EQUILEASE and against PETITIONER.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 4th day of June, **1990,** to: Spence, Payne, Masington & Needle, P.A., Suite **300,** Grove Professional Bldg. **2950 S.W. 27th** Avenue, Miami, Florida **33133;** Joel D. Eaton, Esq., Podhurst, Orseck, Josefsberg, Eaton, Meadow, Olin & Perwin, P.A., **25** West Flagler Street, Suite **800,** Miami, Florida **33130;** George C. Bender, Esq., Bender, Bender & Chandler, **5915** Ponce de Leon Boulevard, Suite **62,** Coral Gables, Florida **33146;** and to Ralph Θ. Anderson, Esq., Daniels & Hicks, P.A., 100 North Biscayne Boulevard, Suite **2400,** Miami, Florida **33132.**

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