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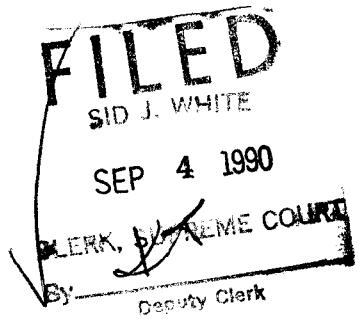

IN THE SUPREME COURT OF FLORIDA

THEODOR TSIKNAKIS and
KIKI TSIKNAKIS, his wife

Petitioners

vs. CASE NO: 75,968

VOLVO FINANCE NORTH AMERICA,
INC., a foreign corporation
and JEANMARIE SANGERMAN

Respondents

JACINTO ABDALA and MARLEN ABDALA

Petitioners

vs. CASE NO: 75,966

WORLD OMNI LEASING, INC., et al

Respondents

ANSWER BRIEF OF RESPONDENT,
VOLVO FINANCE NORTH AMERICA, INC.

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original

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PREFACE

Throughout this Brief, the Petitioners/Plaintiffs, THEODOR TSIKNAKIS and KIKI TSIKNAKIS, his wife, will be referred to either as "PETITIONERS" or as "TSIKNAKIS". The Respondent/Defendant, VOLVO FINANCE NORTH AMERICA, INC. will be referred to as either "RESPONDENT" or as "VOLVO FINANCE". The driver, JEANMARIE SANGERMAN, will be referred to as "SANGERMAN". References to the record will be preceded by the letter "R". References to the Appendix submitted with this brief will be preceded by the abbreviation "APP." followed by the appropriate page number.

To the extent applicable, VOLVO FINANCE adopts the argument contained in Answer Brief of Petitioner, WORLD OMNI LEASING.

STATEMENT OF THE CASE AND OF THE FACTS

TSIKNAKIS brought suit against SANGERMAN, the driver/alleged tortfeasor for damages sustained as a result of an automobile accident. TSIKNAKIS also sued VOLVO FINANCE and alleged that VOLVO FINANCE owned the vehicle and that SANGERMAN operated it with both VOLVO FINANCE'S permission and consent. (R.44). SANGERMAN gained beneficial use and control over the vehicle pursuant to a five year lease. (App. 1). Paragraph four of the lease gave the lessee, C.L.S. Realty, of which SANGERMAN's husband was president, the option of purchasing the vehicle at the end of the lease term for $9,150.00. (App. 1). The lease contract required, and the vehicle was covered by, liability insurance in the amount of $100,000/300,000 and property damage in the amount of $50,000. (App. 3). According to the lease, the lessee is required to maintain and repair the vehicle. (App. 3). The above facts are undisputed.

VOLVO FINANCE moved for Summary Judgment pursuant to **Section 324.021(9)(b) Fla.Stat. (1987)**, alleging that the vehicle in question is operated pursuant to a lease agreement for a period greater than one (1) year, and that the lessee had complied with the requisites of the statute and the lease contract. VOLVO FINANCE thus contended it could not be the "owner" responsible for the acts of the operator. (R.48-49). The trial court agreed and entered Final Summary Judgment in VOLVO FINANCE'S favor. (R.43a).

TSIKNAKIS appealed this ruling and Summary Judgment to the Third District Court of Appeal. The Third District Court of Appeal affirmed the judgment of the trial court and noted that the case involved a question of great public importance and certified to this court the question (although the court failed to articulate the question). The cause is now before this court based upon the Third District Court of Appeal's certification.

SUMMARY OF ARGUMENT

Section 324.021(9)(b) Fla.Stat. is a legislative reflection of what has always been the law of Florida. That is, one who owns mere legal title to a motor vehicle, without exercising any control/beneficial ownership over it at the time of the accident, is not liable for the torts committed by the driver of that vehicle. Indeed, the beneficial owner is the party rightfully responsible to those injured by his torts. This is because the Dangerous Instrumentality Doctrine is not served by holding one liable who has no control over the vehicle. The Dangerous Instrumentality Doctrine places responsibility on those who control the instrumentality. Clearly, those such as VOLVO FINANCE and mortgagors such as banks have no control over the vehicle at the time of its operation. Indeed, to both, automobiles are merely commodities which are sold or financed over which they exercise no daily control. Absent beneficial use and control, there is no predicate upon which to apply the Dangerous Instrumentality Doctrine to entities such as VOLVO FINANCE.

The enactment of **Section 324.021(9)(b) Fla.Stat.** does not foreclose a previously recognized cause of action against those in the position of a long term lessor in violation of a party's right to access of Florida courts. Other than offhanded dictum referred to in one appellate court case, TSIKNAKIS fails to cite any authority for the proposition that those who hold legal title

have ever been held liable to a Plaintiff injured by an automobile. Numerous cases indicate that the contrary is true. Without exercising control/beneficial ownership over the vehicle, one cannot be held liable for its negligent operation. Thus, the statute does not violate the Petitioner's right of access to the court in this case.

The statute is clearly not violative of TSIKNAKIS' substantive due process rights or his right to equal protection. The statute is reasonably related to the legitimate legislative objective of providing a source of recompense for those injured by the negligent operation of automobiles. TSIKNAKIS is not being treated disparately. Rather, TSIKNAKIS is being afforded the benefit of the enactment of the statute which provides him with a higher minimum potential recovery. Accordingly, affirmance of the Third District Court of Appeal's decision and the trial court's decision is required in this case.

ARGUMENT

I. THE THIRD DISTRICT COURT OF APPEAL CORRECTLY DETERMINED THAT **SECTION 324.021(9)(b) FLA.STAT.** IS NOT THE "OWNER" FOR THE PURPOSE OF DETERMINING RESPONSIBILITY FOR THE ACTS OF THE OPERATOR WHERE, AS IN THIS CASE, THERE IS IN EFFECT INSURANCE LIMITS OF $100,000/300,000 LIABILITY, $50,000 PROPERTY DAMAGE, AND THE LEASE OF VEHICLE IS FOR A PERIOD GREATER THAN ONE (1) YEAR.

It is clear there is no need to resort to strained construction of the language contained in the statute involved in this case; to resort to verbose discussions of Florida court decisions which, contrary to TSIKNAKIS' contention, do not define what a long term lessor's liability is prior to the enactment of **Section 324.021(9)(b) Fla.Stat.**; or reach the question of whether the statute is constitutionally infirm. The plain language of the statute states that a lessor such as VOLVO FINANCE in this case is not responsible for the acts of the operator if the vehicle is leased for a term of one year or longer and the requisite insurance coverage has been provided. Accordingly, the Third District Court of Appeal's decision in this case must be affirmed. **Section 324.021(9)(b) Fla.Stat.** provides:

> "(b) Owner/lessor. - Not withstanding any other provision of Florida statutes or existing case law, the lessor, under an agreement to lease a motor vehicle for one (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 determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith". Emphasis supplied.

A basic rule of statutory construction in this State is that words in a statute should be given their plain and ordinary meaning. **Graham v. State, 362 So.2d 924, 925 (Fla. 1978).** Here, it is clear that the statute defines when a lessor may or may not be liable to third parties for operation of the leased vehicle. The first clause immediately eliminates the applicability of statutes and case law that apply to determine lessor's liability or define the lessor as an owner. Thereafter, the type of leasing agreement which falls within the ambit of the statute is described. Finally, it is stated that as long as the required insurance is in effect, the lessor is not deemed the owner of the motor vehicle for determining financial responsibility or for the acts of the operator in connection with the operation of the motor vehicle. Thus, not only is the lessor not required to comply with the States financial responsibility laws, alternatively, the lessor is not responsible for the acts of the driver as an "owner".[1]

Further, a reading of **Section 324.021(9)(a) Fla.Stat.** also supports the Third District Court of Appeal's decision that

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[1]Where the word "or" is used in a statute, it indicates an alternative is intended to that which preceded the word "or". Sparkman v. McClure. 498 So.2d 892, 895 (Fla. 1986).

VOLVO FINANCE is not a vicariously liable owner.[2] Subsection a of the statute provides:

> "(a) Owner. - A person who holds legal title of a motor vehicle; or in the event a motor vehicle is the subject of an agreement for the conditional sale or lessor of with the right of purchase upon performance of the 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".

In this case, VOLVO FINANCE holds title to the vehicle which is the subject of the lease agreement. The agreement contains the provision that it gives the lessee the right to purchase the vehicle following performance of the conditions in the agreement. (App. 1-4). Accordingly, the lessee, and not VOLVO, is deemed the owner for purposes of Florida's Financial Responsibility Laws. This is entirely consistent with Subsection (b) of the statute which states that VOLVO FINANCE is not the owner for the purpose of determining liability for the acts of the driver. Thus, when read in conjunction with each other, Subsections (a) and (b) of the Statute make it clear that one in the position of VOLVO FINANCE cannot be liable to another for the acts of the owner and is therefore not responsible to comply with Florida's Financial Responsibility Laws.

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[2]Effect must be given to each part of the statute, and if possible, each part should be construed in connection with every other section to produce a harmonious result. Pasternack v. Bennett, 138 Fla. 63, 190 So. 56 (1939).

Another Florida statute recognizes that a lessor or vendor in a conditional sales situation is not deemed the owner for compliance with the "rules of the road". Rather, an automobile lessee, conditional vendee, or mortgagor is responsible for compliance with Florida Uniform Traffic Control Laws. **Section 316.003(27) Fla.Stat.**

The statute in question clearly indicates that VOLVO FINANCE cannot be held vicariously liable for the acts of the lessee. Thus, the Third District Court of Appeal's decision in this case must be affirmed.

Indeed, the above cited statutes are clearly consistent with the decisional law of this court. In **Palmer v. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955)**, it was recognized that a mere legal title holder such as VOLVO FINANCE in this case, is not liable for the negligent operation of the motor vehicle where beneficial ownership of the vehicle has been transferred to the driver. The reasoning for this holding is clear and logical and is stated as follows:

> "...the rationale of our cases which imposed tort liability upon the owner of an automobile operated by another, e.g., **Lynch v. Walker, 159 Fla. 188, 31 So.2d 268; Boggs v. Butler, 129 Fla. 324, 176 So. 174; Holston v. Embrey, 124 Fla. 554, 169 So. 400; and Southern Cotton Oil Company v. Anderson, 80 Fla. 441, 86 So. 629, 16 A.L.R. 255,** would not be served by extending the doctrine to one who holds mere naked legal title as security for the payment of the purchase price. In such a title holder, the authority over the use of the vehicle which reposes in the beneficial owner is absent. Probably because of this fact, the term "owner" is defined in **F.S. §317.74(20), F.S.A.,** to mean

> only the conditional vendee, in the case of a vehicle which is the subject of an ordinary agreement for conditional sale. Id. at 637.

Thus, not only has the Florida Legislature recognized that legal title, without beneficial use, cannot provide the basis for holding a title holder liable under the dangerous instrumentality doctrine, this court has recognized it as well.[3]

The principle that beneficial ownership rather than mere naked legal title designates one as an "owner" for the purpose of applying the Dangerous Instrumentality Doctrine has been applied by the District Courts of Appeal in many different situations. In Cox Motor Company v. Faber, 113 So.2d 771 (Fla. 1st DCA 1959), the court held that the automobile dealer which allowed the driver to operate the vehicle pursuant to a conditional sales contract is not liable to an injured pedestrian, since the driver was the owner for the purpose of determining tort liability. In construing language in a contract similar to that involved between the lessee and VOLVO FINANCE that the lessor has no title or interest in the vehicle until completion of the contract, the court stated:

> "To permit a party by contract to have possession of and a contractual vested interested in the ownership of a vehicle but yet to vest legal and beneficial title in another and thereby avoid tort liability would be an anomaly in the law. It would be completely illogical to interpret this clause to mean that even though the purchaser has a binding contract, has a vested right therein, accepts delivery, control and

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[3]See, e.g., White v. Holmes, 89 Fla. 251, 103 So. 623 (1925).

> authority of use of the vehicle, and has made a substantial down payment thereon, that nevertheless he is not the owner in determining this tort liability to third parties.
>
> We therefore hold that the purchaser held a binding contract to purchase pursuant to which he had accepted delivery, made a payment thereon and had control and authority of use thereof; that he was the beneficial owner of the automobile at the time of the accident and was the party liable for any damages resulting therefrom.
>
> At the close of all of the evidence in the case at bar Defendant made a motion for Directed Verdict, which should have been granted. Therefore, judgment against the Defendant is reversed with directions to the trial court to enter judgment for Cox Motor Company." Emphasis supplied.

In **Morgan v. Collier County Motors, Inc.**, 193 So.2d 35 (Fla. 1966), the court held that the employer who financed the driver's vehicle was not liable for the driver's negligence since the driver had beneficial use and control over the vehicle. So too in **McCall v. Garland**, 371 So.2d 1080 (Fla. 4th DCA 1979), the court held that it did not matter that the seller of the vehicle retained the title as collateral to secure payment of installments towards the purchase price of the vehicle. The keys and the physical possession of the vehicle were delivered to the purchaser and sole authority and control over the vehicle was given to the driver. The court concluded that the seller's insurance did not cover the accident vehicle since the seller merely held legal title as does VOLVO FINANCE in this case.

In **Wummer v. Lowery**, 441 So.2d 1151 (Fla. 4th DCA 1983), the court held that the employer who refinanced the employee's

vehicle was not liable to the injured passengers since the employer retained no control over or beneficial use of the vehicle.[4] Simply, control and beneficial use; not legal title, vests one with "ownership" of a vehicle for the purpose of the Dangerous Instrumentality Doctrine. It is clear on this record that VOLVO FINANCE had no beneficial use of, or control over, the vehicle in this case. Accordingly, the Third District Court of Appeal's decision in this case must be affirmed.

In line with the cases cited above and the reasoning contained in them, recently, courts of this State have come to the same conclusion. That is, where there is no beneficial use and control, liability cannot be predicated on mere naked legal title. These recent cases have applied **Section 324.021(9)(b) Fla.Stat.** to reach this result. In **Perry v. GMAC Leasing Corporation, 549 So.2d 680 (Fla. 2nd DCA 1989) rev.den. 558 So.2d 18 (Fla. 1990),**[5] the court affirmed the Summary Judgment in favor of GMAC Leasing Corporation which was based upon **Section 324.021(9)(b) Fla.Stat.** The court rejected the contention that the lease provides that it is the "owner" of the vehicle stating:

> "...Nonetheless the fact remains that the lessor retains no control over the operation

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[4]See also, **Register v. Reading, 126 So.2d 289 (Fla. 1st DCA 1961).**

[5]VOLVO FINANCE adopts World Omni Leasing's position with respect to discretionary review of the issue involved in this case at page 5 of World Omni Leasing's Brief in footnote one (1) where it is asserted that since review of **Perry, supra,** was denied by this court and since **Perry** involved similar issues, review should also be denied in this case. **Harrison v. Hyster Company, 515 So.2d 1279, 1280 (Fla. 1987).**

> 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". Id. at 682.

In **Folmar v. Young, 560 So.2d 798 (Fla. 4th DCA 1990)** the court found that the subsection under consideration here was enacted to limit the liability of lessors under the Dangerous Instrumentality Doctrine. The Third District Court of Appeal followed **Section 324.021(9)(b) Fla.Stat.** in **Raynor v. Alexis De La Nuez, 554 So.2d 141 (Fla. 3rd DCA 1990).** Apparently, the First District Court of Appeal has held similarly in the recent per curiam affirmance in **Gates v. General Motors Acceptance Corp., 15 F.L.W. 2016 (Fla. 1st DCA Aug. 2, 1990).**

In sum, Florida law has never imposed liability on the basis of holding mere legal title to an automobile. There must be something more such as beneficial use or control over the vehicle at the time of the accident. **Martin v. Lloyd Motor Company, 119 So.2d 413 (Fla. 1st DCA 1960). Section 324.021(9)(b) Fla.Stat.** merely codifies what, in essence, has always been Florida law. Accordingly, the Third District Court of Appeal correctly decided the issue presented in this case and thus this court should affirm.

Notwithstanding the above, TSIKNAKIS assails the District Court's decision in this case as well as two of the cases relied upon by the Third District Court of Appeal to reach its decision.

VOLVO FINANCE address TSIKNAKIS' contentions in the order which they appear in his brief.

TSIKNAKIS' first contends that until Kraemer v. General Motors acceptance Corp., 556 So.2d 431 (Fla. 2nd DCA 1989), Florida courts had found lessors liable for the negligence of the driver regardless of whether the lessor is "short term" or "long term". (TSIKNAKIS' brief at page 7).[6] It should be first noted that the statute applies to leases one year or longer and does not distinguish between "short term" or "long term" leases. The phrase "short term" or "long term" does not appear either in the statute or in Perry, supra. Moreover, those decisions are not based upon the distinction on the length of the lease other than with regard to how this distinction may relate to the degree of control of beneficial ownership which is the determining question in both Perry and Kraemer. The length of the lease is referred to in the statute simply to reflect that leases of one year or longer typically do not vest beneficial use or control over the vehicle in lessors, the same as banks or conditional vendors. Thus, the distinction between "long term" and "short term", in and of itself, is not determinative of the issues involved in this case and do not really form the underlying basis for the

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[6]Also on page 7, TSIKNAKIS attempts to adopt the arguments of Petitioners in Raynor v. Equilease, No.75,870. VOLVO FINANCE objects to this adoption since these arguments are not before the parties or the court in this case. Indeed, it is interesting to note that at page 3 of the Petitioner's brief in Raynor v. Equilease, the Petitioner tacitly agrees that Section 324.021(9)(b) Fla.Stat. is an exception to Florida's Dangerous Instrumentality Doctrine.

Perry and Kraemer decisions. Leases for a period of one year or longer do form that basis.

On page 8 of his brief, TSIKNAKIS contends that mere legal title owners are liable under the Dangerous Instrumentality Doctrine. TSIKNAKIS cites, **Penn National Mutual Casualty Insurance Company v. Ritz, 284 So.2d 474 (Fla. 3rd DCA 1973)** and **Hertz Corporation v. Dixon, 193 So.2d 176 (Fla. 1st DCA 1966)** in support of this contention. However, neither of these cases supported TSIKNAKIS' position here. In Ritz and in Dixon, the title holders were not merely title holders. They were title holders who participated in acquiring the vehicles for minor relatives who otherwise would not have operated the vehicle in the first place without their participation. As stated in Dixon, the title holder put in motion and made possible the operation of the automobile. These decisions obviously required more than mere legal title. They required that the title holder also removed the driver's impediments to acquiring and operating the vehicle. In the instant case, VOLVO FINANCE did not eliminate legal or financial barriers which prevented either the lessee or SANGERMAN from operating the vehicle. It should be noted that at the time of the Ritz decision, the father/mother of an applicant for driver's license under the age of eighteen had to sign the application and were jointly and severally liable for the driver's negligence. Section 322.091 Fla. Stat. (1973). The person who signed the application could cause the cancellation of the minor's license by notifying the issuing authority in

writing. **Section 322.10 Fla. Stat. (1973)**. Thus, it is clear that the Defendants in **Dixon** and **Ritz** had control over the driver and the vehicle absent here. VOLVO FINANCE only held legal title. Accordingly, **Ritz** and **Dixon** do not support TSIKNAKIS' position here.

On page 9 of his brief, TSIKNAKIS next contends that **Palmer**, **supra**, did not say that mere legal title owners are not liable under the Dangerous Instrumentality Doctrine. Rather, it is one who holds title as security for payment of the purchase price. However, this statement is further qualified in **Palmer** at 81 So.2d 635, 637:

> "In such title holder the authority over the use of the vehicle which reposes when the beneficial owner is absent...It is therefore apparent that it was necessary for appellee in the case before us to prove only that the beneficial ownership passed to the buyers before the accident occurred..."

As demonstrated by the quote, again, TSIKNAKIS misses the point. The proper focus is not whether the title is held for security of payment of the purchase price. It is whether beneficial ownership i.e., authority over the use of the vehicle, has occurred. In the case subjudice, C.L.S. REALTY and SANGERMAN clearly had beneficial use of the vehicle; VOLVO FINANCE did not.[7]

On pages 9 and 10 of TSIKNAKIS' brief, it is next contended that the lessors are owners in an attempt to distinguish the

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[7]In reality, the title held in this case is security to the lessor.

lease agreement from a conditional sales contract. With regard to VOLVO FINANCE, it is undisputed that the lessee had the right to obtain legal title by exercising the purchase option. (R.51). This is entirely consistent with **Section 324.021(9)(a) Fla.Stat.** which makes a conditional vendee or lessee pursuant to a lease agreement with the right to purchase, the owner of the vehicle. In essence, a conditional vendee and lessee who leases pursuant to an agreement with the right to purchase, in the eyes of the legislature, are equal for the purpose of determining liability for the negligent operation of the motor vehicle. Thus, the reasoning in the **Palmer** case is indistinguishable from the instant case and completely supports the Third District Court of Appeal's decision in this case.[8]

Contrary to TSIKNAKIS' contention at page 11 of the brief, **Section 324.021(9)(b) Fla.Stat.** is not a recognition that lessors of a vehicle for a period in excess of one year are liable under the Dangerous Instrumentality Doctrine. Rather, it is an exemption from liability based upon what has been recognized in Florida case law as an absence of beneficial ownership and a

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[8]That a lease for a period of greater than one year is equated with a sale of a motor vehicle, conditional or otherwise, is evinced by examining Chapter 681, Florida Statutes; the Florida Motor Vehicle Warranty Act. Pursuant to **Section 681.102(3) Fla.Stat.**, "consumer" means a purchaser or lessee. **Section 681.102(8) Fla.Stat.** defines lessee as a consumer who leases a motor vehicle for one year or more and the lessee is responsible for repairs. **Section 681.104 Fla.Stat.** provides remedies for purchasers and lessees alike. It is obvious then that lessees are afforded the same remedies as a conditional purchaser since they exercise the same beneficial ownership over the vehicle and are thus afforded the same remedies as a purchaser under the Florida Lemon Law.

concurrent absence of liability if the requisite insurance coverage is maintained pursuant to the statute.

TSIKNAKIS next faults **Perry** and **Kraemer** for relying on **Palmer** which is a conditional sale case asserting that the lease involved in this case only transfers possession and control and not ownership. However, neither does a conditional sales agreement transfer absolute ownership. Both the lease in this case and the conditional sales contract require the performance of contractual conditions precedent in order for the conditional vendee or the lessee to gain title and thus both legal and beneficial ownership of the vehicle.[9] Until then, beneficial use and control resides in the conditional vendee or lessee. As recognized by the courts and legislature of this State, beneficial use and control over a vehicle is the valid predicate upon which one may be held liable to another as "owner" for the purposes of the Dangerous Instrumentality Doctrine. Simply, holding one liable such as VOLVO FINANCE who has no authority over such matters as who may drive the vehicle, where the vehicle may be driven, or for what purpose the vehicle may be used does not serve the purpose of the Dangerous Instrumentality Doctrine. As stated by Judge Altenbrand in his concurrence in **Kraemer**, **supra**, **556 So.2d at 435:**

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[9]A conditional sales contract is a: "Form of a sales contract in which the seller reserves title until buyer pays for goods at which time the condition having been fulfilled, such title passes to buyer. **Black's Law Dictionary**, **5th Ed., P.267 (1979).**

> "As a practical matter, the long term automobile lease is little more than a method of creative financing. GMAC is technically the legal owner of this car, but its ability to control the use of the car is not significantly different from that of a bank who lends money for the purchase of a car".

This is a clear distinction between the instant case and the Susco Car Rental System of Florida v. Leonard, 112 So.2d 832, 835 (Fla. 1959) since in Susco, the rental agency had the ability to control who drove the vehicle among other things. Here, there is no such ability given to VOLVO FINANCE. Accordingly, the Dangerous Instrumentality Doctrine does not make VOLVO FINANCE the "owner" anymore than a lending institution such as a bank. Accordingly, the District Court correctly decided the issue before it in this case and must be affirmed.

II. THE DISTRICT COURT CORRECTLY FOUND THAT SECTION 324.021(9) Fla.Stat. REFLECTS PRIOR DECISIONS OF THE COURTS OF THIS STATE WHICH HOLD THAT PERSONS IN THE POSITION OF VOLVO FINANCE ARE NOT LIABLE UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE.

TSIKNAKIS first asks whether the legislature intended to eliminate a lessor's liability by enacting **324.021(9)**. It is manifest that the first premise upon which TSIKNAKIS operates is erroneous. TSIKNAKIS asserts that a lessor who only has a legal interest in the vehicle is liable for its operation. However, persons holding title, in the absence of beneficial use and control of the vehicle, have never been liable in Florida under the Dangerous Instrumentality Doctrine. There has never been "common law" liability for those who hold mere legal title to an

automobile. **Perry**, **supra**, **549 So.2d 680, at 682.** Thus, **Section 324.021(9) Fla.Stat.** did not alter VOLVO FINANCE'S liability at common law. Even if there existed such "common law" liability, it is clear that the legislature intended to preempt that liability when it stated:

> "(b) Owner/lessor. - Notwithstanding any other provision of Florida statutes or existing case law..." Emphasis supplied.

Since the legislature is presumed to know of judicial decisions concerning the subject matter of the legislation, it is clear that any statute or judicial decision that holds a long term lessor liable has been negated by **Section 324.021(9)(b) Fla.Stat.** **Ford v. Wainwright**, **451 So.2d 471, 475 (Fla. 1984).**

TSIKNAKIS next complains that the Fourth District Court of Appeal in **Folmar** should not have looked to the transcript of legislative debates concerning the enactment of the statute. This rule is true only if the statute is plain on its face. **Carawan v. State**, **515 So.2d 161 (Fla. 1987).** However, it should be noted that TSIKNAKIS apparently takes inconsistent positions here. On page 13 of his brief, TSIKNAKIS describes the statute as "...inartfully written..." and on page 20 as "...somewhat confusing...". If this is the case, then resort may be had to extrinsic indications of legislative intent. If the statute is plain on its face, then clearly the legislature intended to define an owner/lessor's liability regardless of any prior statutes or case law. **Section 324.021(9)(b).** If the statute is ambiguous, then **Folmar** properly examined the legislative

history. Thus, either way TSIKNAKIS proceeds in his attempt to escape the effect of the statute. The inescapable fact remains that VOLVO FINANCE cannot be liable to TSIKNAKIS as an "owner" under the Dangerous Instrumentality Doctrine", and **Folmar** was correctly decided.

TSIKNAKIS next contends that the statute does not speak of tort liability or the Dangerous Instrumentality Doctrine and apparently requests this court to examine the legislation in a vacuum. TSIKNAKIS states that the statute speaks only to financial responsibility. The Dangerous Instrumentality Doctrine is a doctrine making one who is an owner of dangerous instrumentality vicariously liable to an injured party. It gives such an owner a strong incentive to select safe operators of the instrumentality and to promote safe operation of the motor vehicle. **Kraemer**, 556 So.2d at 435 n.1(concurrence, Altenbrand, J.). Financial responsibility laws provide the mechanism to insure compensation. Obviously, without potential liability, there would be no need to be financially responsible to others. Thus, it is difficult to conceive how either the Dangerous Instrumentality Doctrine or the Financial Responsibility Law can be examined in a vacuum completely separate and apart from each other as suggested by TSIKNAKIS. TSIKNAKIS also ignores the plain language of the statute which not only speaks to financial responsibility but also to an owner's liability for the acts of the operator. Simply, the legislature has defined who is an owner for the purpose of determining liability to others for

negligent operation of a motor vehicle and VOLVO FINANCE is not within that definition pursuant to Florida law.[10]

III. **SECTION 324.021(9)(b) FLA.STAT.** IS CONSTITUTIONALLY SOUND AND DOES NOT INFRINGE UPON TSIKNAKIS' RIGHT TO ACCESS TO THE COURTS, TO EQUAL PROTECTION, OR DUE PROCESS.

As a threshold matter, since there are ample grounds to decide this case in favor of VOLVO FINANCE other than those based on examinations of the constitutionality of the statute, this court should not concern itself with TSIKNAKIS' constitutional arguments. State v. Tsavaris, 394 So.2d 418 (Fla. 1981). TSIKNAKIS has the burden of clearly demonstrating that the statute involved is violative of the constitution. Village of North Palm Beach v. Madson, 167 So.2d 721, 726 (Fla. 1964). Further, TSIKNAKIS must overcome the presumption that Section 324.021(9)(b) Fla.Stat. is constitutional and that the statute should be construed in a manner that it is found to be constitutional if at all possible. Gulfstream Park Racing Association, Inc. v. Department of Business Regulation, 441 So.2d 627 (Fla. 1983); Burnsed v. Sea Board Coastline Railroad Company, 297 So.2d 13 (Fla. 1974). If this court has any doubts concerning the constitutional validity of the statute, the court has a duty to resolve those doubts in favor of constitutionality. State v. Reilly Enterprises, Inc., 298 So.2d 405 (Fla. 1974).

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[10]VOLVO FINANCE will not address TSIKNAKIS' further argument set forth in Section IIb of his brief since it is not directed towards VOLVO FINANCE.

Against this backdrop, TSIKNAKIS first contends that **Section 324.021(9)(b) Fla.Stat.** denies his access to the court citing **Art.I, Section 21, Fla.Const.** However, TSIKNAKIS has wholly failed to demonstrate that such a cause of action exists under statutory law and has failed to demonstrate that such a cause of action existed pursuant to common law as defined by **Section 2.01 Fla.Stat.** Thus, there can be no claim of denial of access to the courts based on **324.021(9)(b)**. Kluger v. White, **41 So.2d 1, 4 (Fla. 1973)**. This is because as early as 1925, even subsequent to this court's ruling in **Southern Cotton Oil Company v. Anderson, 80 Fla. 441, 86 So. 621 (1920)**, this court recognized that there is no cause of action against the one who leases an automobile for hire in the absence of some indicia of control over the operation of the vehicle or the operator. Indeed, it was clearly recognized that there must be some relationship between the owner of the vehicle and the operator under the guise of master/servant or principal/agent in order for there to be a predicate to liability for operation of the automobile. **White v. Holmes, 89 Fla. 251, 103 So. 623 (1925).**[11]

As noted by the Second District Court of Appeal, other than dicta stated in **Racecon, Inc. v. Mead, 388 So.2d 266 (Fla. 5th**

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[11]This case was apparently overruled in **Lynch v. Walker, 31 So.2d 268, 271, 272 (Fla. 1947)**. However, for the purpose of achieving a retrospective look regarding the status of one in the position of VOLVO FINANCE under Florida Common Law, the **White** case demonstrates that there is no common law right of action against one such as VOLVO FINANCE. Indeed, this court apparently retreated from such a sweeping statement of liability in **Palmer v. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955)**.

DCA 1980), there is no indication that the Dangerous Instrumentality Doctrine has ever applied to persons in the position of a long term lessor at common law. Perry v. GMAC Leasing Corp., 549 So.2d 680, 682 (Fla. 2nd DCA 1989). Simply, the legislature has not abrogated a common law right by the enactment of 324.021(9)(b). Thus, TSIKNAKIS has not suffered a denial of access to the courts.

Citation to Martin v. Lloyd Motor Company, 119 So.2d 413 (Fla. 1st DCA 1960); Susco Car Rental Systems of Florida v. Leonard, 112 So.2d 832 (Fla. 1959) and Avis Rent-A-Car Systems v. Garmas, 440 So.2d 1311 (Fla. 3rd DCA 1933) fails to support TSIKNAKIS' contention that there existed, at common law, a right of action against one such as VOLVO FINANCE.

In Martin, supra, the bailee was held liable to a third party for injury occasioned by the bailee's permantee. The court examined the Southern Cotton Oil and Susco decisions as well as others and concluded that the bailor did not have the requisite dominion over the motor vehicle at the time of the accident.

> "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..." Emphasis supplied.

In the instant case, VOLVO FINANCE clearly did not have control over the vehicle at the time of the accident. Thus, the predicate for liability is absent here.[12]

In **Susco** and **Garmas**, the lessor retained control over who could operate the vehicle. Here, there is no such retention of control/beneficial use. Thus, the above cases cited by TSIKNAKIS failed to support his theory that a cause of action at common law always existed against a legal title holder of a motor vehicle.

Even if this court determines that there is a cause of action existing at common law against VOLVO FINANCE, there is clearly a reasonable alternative to such blanket legal title holder liability. **Kluger, supra 281 So.2d at 4.** That is, the legislature has provided that lessees of vehicles for periods of one year or greater must have in full force and effect the minimum insurance limits of $100,000/300,000 liability and $50,000 property damage required by the statute. The legislature has prescribed a much lower minimum in non-lease cases. **Section 324.021(7) Fla.Stat.** Therefore, TSIKNAKIS has failed to meet his burden of establishing that he has been unconstitutionally deprived of his right of access to the courts. Therefore, the Third District Court of Appeal's decision must be affirmed.

TSIKNAKIS next contends that the sole effect of the statute is to shift the risk of insolvency of a tortfeasor from the owner to the injured party. TSIKNAKIS obviously fails to recognize

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[12]See also, **Wilson v. Burke**, 53 So.2d 319, 321 (Fla. 1951) where this court required that there be control over the vehicle at the time of the accident.

that he fairs much better by being able to seek at least a minimum of $100,000 in damages from the lessee which can be collected than if he had been injured by one who needed only provide the minimum of $10,000 in liability coverage. This clearly would have been the case if SANGERMAN was driving the car which had been financed by a bank and $100,000 limits were not purchased by the owner. As in the Abdala case, it is interesting to note that TSIKNAKIS also did not even attempt to name the corporate lessee in this case, C.L.S. Realty. There is no statutory restriction from seeking damages from it. Indeed, a long term lessor has never been burdened by assuming the risk of a lessee's insolvency other than for the payment of the vehicle. However, a party injured by a tortfeasor has always taken the tortfeasor's assets, including insurance coverage, as he finds them. Here, TSIKNAKIS found the alleged tortfeasor with the highest minimum insurance limits the Florida Legislature has mandated. TSIKNAKIS' cry that the "pocket isn't quite deep enough" should not now form the basis of establishing that the statute is constitutionally infirm.

Further, the statute in question readily withstands TSIKNAKIS' constitutional challenge on an equal protection basis. This is because TSIKNAKIS has not shown that he has arbitrarily been the subject of hostile legislation which classifies him unfairly. Georgia Southern & Florida Railway Company v. 7Up Bottling Company of Southeast Georgia, 175 So.2d 39, 40 (Fla. 1965), citing, Davis Florida Power Co., 64 Fla. 246, 60 So. 759

(1913). In reality, the legislation which requires that injured Plaintiffs such as TSIKNAKIS be afforded a higher minimum of insurance proceeds inure to the benefit of such Plaintiffs and if such plaintiffs are treated disparately, it is in TSIKNAKIS' favor.[13] Since the statute does not unfairly discriminate against TSIKNAKIS, there can be no valid claim that his equal protection rights have been violated.

Even if this court finds that the statute "classifies" persons such as TSIKNAKIS, an equal protection challenge still must fail since TSIKNAKIS has not met his burden of establishing that the statute fails to bear a reasonable relationship to a legitimate state interest. Pinillos v. Cedars of Lebonan Hospital Corporation, 403 So.2d 365 (Fla. 1981). In the case subjudice, the legitimate state interest addressed by the statute is to provide for financial security requirements for those who are legally responsible in damages to others for the operation of a motor vehicle. Section 324.011 Fla.Stat. Section 324.021(9)(b) mandates that the highest minimum liability insurance coverage required of drivers of motor vehicles by the legislature in the amount of $100,000/300,000 and $50,000 in property damage be provided by drivers of cars financed pursuant to long term leases. The requirement of such a high minimum clearly bears a reasonable relationship to the State interest of

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[13]If a law does not unfairly classify the individual who is complaining of its effect, it is not subject to an equal protection challenge. Nowack, Rotunda & Young, Constitutional Law, 2nd Ed. pp.585-586 (1984).

compensating parties injured by reason of negligent operation of motor vehicles. Accordingly, TSIKNAKIS' equal protection challenge simply is meritless.

Neither can the statute be stricken by reason of it being violative of substantive due process rights. The test for determining whether the statute violates due process is whether the statute bears a reasonable relationship to the stated legislative goal and that the statute did not in an arbitrary or discriminatory manner achieve the legislative objective. Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla. 1974).

The legislative objective in this case is to provide a source of recovery to those injured by reason of negligently operated automobiles. Section 324.021(9)(b) is reasonably related to that goal since it provides for the highest minimum limits of insurance coverage. The statute does not discriminate against those injured by long term lessees. The assumption made by TSIKNAKIS that the statute discriminates against those most severely injured is simply untenable. The statement assumes that those most severely injured are always injured by those who drive leased vehicles. TSIKNAKIS also fails to recognize that if those most severely injured are afforded a greater insurance guarantee by the statute, they surely cannot complain of a negative impact. Simply, Section 324.021(9)(b) is not violative of TSIKNAKIS due process rights.

In sum, VOLVO FINANCE occupies the same position as that of a bank/mortgagor or conditional vendor. It does not retain

possession, control, beneficial use over the vehicle in any manner. Absent some ability to control the vehicle's operation, there is no predicate to liability. This has been the rule of law and there are no contrary holdings in the State of Florida. Liability has never been predicated on mere legal title. Section 324.021(9)(b) is not constitutionally infirm and accordingly, this court should affirm the rulings of the trial court and the Third District Court of Appeal in this case. Palmer v. R.S. Evans, of Jacksonville, Inc., 81 So.2d 635 (Fla. 1955); Martin v. Lloyd Motor Company, 119 So.2d 413 (Fla. 1st DCA 1960); Lee v. Ford Motor Company, 595 F.Supp. 1114 (D.DC. 1984).

CONCLUSION

Wherefore, due to the foregoing, VOLVO FINANCE NORTH AMERICA, INC. respectfully request this court affirm the decision of the Third District Court of Appeal and the order of the trial court in all respects.

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