IN THE SUPREME COURT OF FLORIDA

THEODOR TSIKNAKIS and
KIKI TSIKNAKIS, his wife,

Petitioners,

v. CASE NO. 75,968

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

Respondents.
_____/

JACINTO ABDALA and MARLEN ABDALA,

Petitioners,

v. CASE NO. 75,966

WORLD OMNI LEASING, INC., et al.,

Respondents.
_____/

RESPONDENT WORLD OMNI LEASING, INC.'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS ii

TABLE OF CITATIONS AND OTHER AUTHORITIES iv

STATEMENT OF THE CASE AND FACTS 1

ISSUES 3

ARGUMENT 4

I. THE DISTRICT COURT WAS CORRECT IN CONCLUDING THAT PURSUANT TO § 324.021(9)(b), FLA. STAT. (1989), WOLI IS NOT THE "OWNER" OF THE LEASED VEHICLE AND THEREFORE NOT LIABLE FOR THE LESSEE/DRIVER'S NEGLIGENCE. 4

A. PETITIONERS' INACCURACIES 4

B. § 324.021(9)(b) 8

C. SECTION 324.021(9)(a) 13

D. THE DANGEROUS INSTRUMENTALITY DOCTRINE IS NOT ABSOLUTE IN ITS APPLICATION 20

E. PERRY AND KRAEMER WERE CORRECTLY DECIDED . . 22

F. COMMON LAW LIABILITY 27

G. THE DANGEROUS INSTRUMENTALITY DOCTRINE IS A FINANCIAL RESPONSIBILITY PRINCIPLE LIMITED BY § 324.021(9)(b) 31

H. THE LEGISLATIVE INTENT WAS CLEARLY TO EXEMPT LESSORS, SUCH AS WOLI, FROM LIABILITY UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE . . . 33

II. APPLYING § 324.021(9)(b) TO ACCIDENTS OCCURRING SUBSEQUENT TO ITS EFFECTIVE DATE, AUGUST 6, 1986, IS NOT A RETROACTIVE APPLICATION, REGARDLESS OF THE DATE OF EXECUTION OF THE LEASE AGREEMENT 36

III. PETITIONERS HAVE FAILED TO MEET THEIR BURDEN OF CLEARLY DEMONSTRATING THAT § 324.021(9)(b) IS UNCONSTITUTIONAL 39

A. SECTION 324.021(9)(b), BY EXCLUDING WOLI FROM THE DEFINITION OF OWNER, DOES NOT VIOLATE PETITIONERS' RIGHT OF ACCESS TO THE COURTS . 39

B. PETITIONERS HAVE FAILED TO MEET THEIR BURDEN OF SHOWING A VIOLATION OF DUE PROCESS AND/OR EQUAL PROTECTION 43

CONCLUSION 50

CERTIFICATE OF SERVICE 50

TABLE OF CITATIONS AND OTHER AUTHORITIES

Page

Anderson v. Southern Cotton Oil Co.,
74 So. 975 (Fla. 1917) 5, 24, 28

Arter v. Jacobs,
234 N.Y.S. 357 (App. Div. 1929). 19

Atlas Travel Service, Inc. v. Morelly,
98 So.2d 816 (Fla. 1st DCA 1957) 13

Baker v. Clifford-Mathew Inv. Co.,
128 So. 827 (Fla. 1930) 27

Beatty v. Western Pacific Ins. Co.,
445 P.2d 325 (Wash. 1968) 17

Bly v. Mid-Century Ins. Co.,
698 P.2d 877 (Nev. 1985) 18

Broward v. Broward,
117 So. 691 (Fla. 1928) 13

Burnsed v. Seaboard Coast Line Railroad Co.,
290 So.2d 13 (Fla. 1974) 44

Castillo v. Bickley,
363 So.2d 792 (Fla. 1978) 20

Citizens of State v. Public Service Comm'n,
425 So.2d 534 (Fla. 1982) 13

Cowles v. Rogers,
762 S.W.2d 414 (Ky. App. 1989) 18

Daytona Beach v. Del Percio,
476 So.2d 197 (Fla. 1985) 38, 46

Department of Health & Rehab. Serv. v. Shatto,
487 So.2d 1152 (Fla. 1st DCA 1986) 35

Devlin v. Florida Rent-A-Car, Inc.,
454 So.2d 787 (Fla. 5th DCA 1984) 20

Ellsworth v. Insurance Co. of North America,
508 So.2d 395 (Fla. 1st DCA 1987) 35

Engleman v. Traeger,
136 So. 527 (Fla. 1931) 6, 22, 28

Fahey v. Raftery,
353 So.2d 903 (Fla. 4th DCA 1977) 20

Fields v. Zinman,
394 So.2d 1133 (Fla. 4th DCA 1981) 35

Fleeman v. Case,
342 So.2d 815 (Fla. 1977) 38

Folmar v. Young,
15 F.L.W. D366 (Fla. 4th DCA
Opinion filed February 6, 1990) 5, 8, 11, 41

Frank v. Fleming,
69 So.2d 887 (Fla. 1954) 31

Fraternal Order of Police, Metropolitan Dade
County Lodge No. 6 v. Department of State,
392 So.2d 1296 (Fla. 1980) 45-48

Gary Fronrath Volkswagen, Inc. v. Munsey,
532 So.2d 1296 (Fla. 4th DCA 1988) 21

Gray v. Callahan,
197 So. 396 (Fla. 1940) 27

Gulfstream Park Racing Association, Inc. v.
Department of Business Regulation,
441 So.2d 627 (Fla. 1983) 44

Harrison v. Hyster Co.,
515 So.2d 1279 (Fla. 1987) 5

Hertz Corp. v. Dixon,
193 So.2d 176 (Fla. 1st DCA 1966) 14

High Point Savings and Trust Co. v. King,
117 S.E.2d 421 (N.C. 1960) 19

Horne v. Vic Potamkin Chevrolet, Inc.,
533 So.2d 261 (Fla. 1988) 21

In re Levy's Estate,
141 So.2d 803 (Fla. 2d DCA 1962) 13

In re Will of Martell,
457 So.2d 1064 (Fla. 2d DCA 1984) 37

Insurance Company of North America v.
Avis Rent-A-Car System, Inc.,
348 So.2d 1149 (Fla. 1977) 32

Jetton v. Jacksonville Electric Authority,
399 So.2d 396 (Fla. 3d DCA 1981) 41

Kluger v. White,
281 So.2d 1 (Fla. 1973) 39, 41

Kraemer v. General Motors Acceptance Corp.,
556 So.2d 431 (Fla. 2d DCA 1989) 4-6, 21-27, 30

Lamb v. Volkswagenwerk Aktiengesellschaft,
631 F. Supp. 1144 (S.D. Fla. 1986) 37

Lasky v. State Farm Ins. Co.,
296 So.2d 9 (Fla. 1974) 34

Lee v. Ford Motor Co.,
595 F. Supp. 1114 (D.D.C. 1984) 14, 24

Lowry v. Parole and Probation Comm'n,
473 So.2d 1248 (Fla. 1985) 33

Loxahatchee Revert Envtl. Control Dist.
v. School Bd. of Palm Beach County,
496 So.2d 930 (Fla. 4th DCA 1986) 45, 47

Lynch v. Walker,
31 So.2d 268 (Fla. 1947) 30

Mahood v. Bessemer Properties, Inc.,
18 So.2d 775 (Fla. 1944) 37

Manning v. Travelers Ins. Co.,
250 So.2d 872 (Fla. 1971) 37

Martin v. Lloyd Motor Co.,
119 So.2d 413 (Fla. 1st DCA 1960) 30

Matthews v. McCain,
170 So. 323 (Fla. 1936) 13

Moore v. Ford Motor Credit Co.,
420 N.W.2d 577 (Mich. App. 1988) 16, 24

Nye v. Seymour, 392 So.2d 326
(Fla. 4th DCA 1980) 21

Osterndorf v. Turner,
426 So.2d 539 (Fla. 1982) 38, 46

Overland Construction Co., Inc. v. Sirmons,
369 So.2d 572 (Fla. 1979) 40

Palmer v. Evans,
81 So.2d 635 (Fla. 1955) 14, 21

Perry v. G.M.A.C. Leasing Corp.,
549 So.2d 680 (Fla. 2d DCA 1989) . . 4-6, 9, 11, 15, 22, 23, 27, 30, 31, 40

Pfeiffer v. City of Tampa,
470 So.2d 10 (Fla. 2d DCA 1985) 47, 48

Pinnellas County v. Banks,
19 So.2d 1 (Fla. 1944) 38

Powell v. State,
345 So.2d 724 (Fla. 1977) 44

Racecon, Inc. v. Meade,
388 So.2d 266 (Fla. 5th DCA 1980) 5

Raynor v. De La Nuez,
15 F.L.W. D694 (Fla. 3d DCA 1990) 5, 7

Re Seven Barrels of Wine,
83 So. 627 (Fla. 1920) 36

Register v. Redding,
126 So.2d 289 (Fla. 1st DCA 1961) 21

Riggs v. Gardikas,
427 P.2d 890 (N.M. 1967) 19

Ripley v. Ewell,
61 So.2d 420 (Fla. 1952) 13

Robelo v. United Consumer's Club, Inc.,
14 F.L.W. 2706 (Fla. 3d DCA 1989) 21

Rogers v. Martin,
99 So. 551 (Fla. 1924) 27

Siverson v. Martori,
581 P.2d 285 (Ariz. App. 1978) 17

Southern Cotton Oil Co. v. Anderson,
86 So. 629 (Fla. 1920) 28

State v. Bales,
343 So.2d 9 (Fla. 1977) 44

State v. Fussell,
24 So.2d 804 (Fla. 1946) 20

State v. Metz Construction Co., Inc.,
285 So.2d 598 (Fla. 1973) 12

State v. Saiez,
489 So.2d 1125 (Fla. 1986) 38, 46

State v. Sullivan,
43 So.2d 438 (Fla. 1949) 20

Susco Car Rental System of Fla. v. Leonard,
112 So.2d 832 (Fla. 1959) 5, 22

Tatzell v. State,
356 So.2d 787 (Fla. 1978) 13

The Florida High School Activities
Ass'n, Inc. v. Thomas,
434 So.2d 306 (Fla. 1983) 48

United States Fidelity & Guar. Co. v.
Department of Insurance,
453 So.2d 1355 (Fla. 1984) 38, 47

Vildibill v. Johnson,
492 So.2d 1047 (Fla. 1986) 35, 45

Village of North Palm Beach v. Mason,
167 So.2d 721 (Fla. 1964) 44

West's Drug Stores, Inc. v. Allen Inv. Co.,
170 So. 447 (Fla. 1936) 27

White v. Hillsborough County Hosp. Auth.,
448 So.2d 2 (Fla. 2d DCA 1983) 41

White v. Holmes,
103 So. 623 (Fla. 1925) 6, 27, 28, 40

Wilson v. Burke,
53 So.2d 319 (Fla. 1951) 31

Witkofski v. Daniels,
198 A. 19 (Pa. 1938) 17

Other Authorities

A.R.S. § 28-101(30) 17

A.R.S. § 28-921(A) 17

Art. I, sec. 21, Fla. Const. 40

§ 2.01, Fla. Stat. (1989) 27, 28, 39, 40

§ 316.003(26), Fla. Stat. (1989) 8, 24

§ 320.01(3), Fla. Stat. (1989) 6, 8, 30

§ 320.02, Fla. Stat. (1989) 6, 30

§ 324.011, Fla. Stat. (1989) 32

§ 324.021, Fla. Stat. (1989) 33

§ 324.021(9), Fla. Stat. (1989) 8, 9, 13, 21, 24

§ 324.021(9)(a), Fla. Stat. (1989) 12-14, 17, 19, 20

§ 324.021(9)(b), Fla. Stat. (1989) . 2-13, 23, 24, 31-40, 42-49

§ 324.051, Fla. Stat. (1989) 9, 12

Eleventh Judicial Circuit Tort Study, May 1986 43

Eleventh Judicial Circuit Tort Study, April 1987 43

THE MIAMI HERALD, April 3, 1988, "Uninsured-Auto Crisis Confronts Lawmakers," at 1, col. 1 43

STATEMENT OF THE CASE AND FACTS

PETITIONERS seek review of the Third District Court of Appeal decision affirming a Final Partial Summary Judgment entered in favor of Defendant, WORLD OMNI LEASING, INC., and against Plaintiffs, JACINTO ABDALA and MARLEN ABDALA.

WORLD OMNI LEASING, INC., a Defendant and Appellee, will be referred to herein as "WOLI" and/or "LESSOR." JACINTO ABDALA and MARLEN ABDALA, the Plaintiffs/Appellants, will be referred to herein as "PETITIONERS." JERRY CARVER, a Defendant/Appellee, will be referred to herein as "CARVER" and/or "DRIVER." The Record on Appeal will be referred to by the symbol "R", and WOLI's Appendix will be referred to as "App."

WOLI presents the following statement of the case and facts to clarify that presented by PETITIONERS.

On April 23, 1985, WOLI and Jane Carver, a non-party to this action ("lessee"), entered into a lease agreement for a five (5) year period. (R. 11-14). The lease agreement required lessee to obtain insurance acceptable to WOLI with limits of not less than $100,000/$300,000 bodily injury liability and $50,000 property damage liability. (R. 12-14, App. 16-19). The required insurance was in effect at all times material hereto. (R. 9-10, 21-22).

In addition to lessee's obligation to obtain insurance, lessee was solely responsible for: 1) maintenance of the leased vehicle; 2) repairs to keep the leased vehicle in good working order; 3) any other expenses associated with operating the leased vehicle; 4) servicing the leased vehicle according to the manufacturer's recommendations set forth in the owner's manual; 5) payment of

title expenses; 6) payment of all registration fees; 7) payment of all licensing fees; 8) payment of all inspections of the leased vehicle required by governmental authority; 9) payment of all excise, use, personal property, gross receipts and other taxes incurred with respect to the operation of the leased vehicle; and 10) indemnification to WOLI as a result of all losses, damages, injuries, claims, demands and expenses arising out of the operation of the vehicle. (R. 14; App. 19).

On February 23, 1989, CARVER, while operating the leased vehicle, was allegedly involved in an accident with PETITIONER. (R. 3). On March 30, 1989, PETITIONERS filed a Complaint against WOLI, seeking damages on the sole basis that WOLI "owned" the motor vehicle being operated by CARVER. (R. 2-3). On April 26, 1989, WOLI moved for Final Partial Summary Judgment on the ground that there existed no genuine issues of material fact and that, as a matter of law, WOLI was not liable to PETITIONERS as the "owner" of the subject vehicle pursuant to § 324.021(9)(b), Florida Statutes (1989). (R. 7-14).

Final Summary Judgment was entered in favor of WOLI on June 29, 1989. (R. 42-43). The Third District Court of Appeal affirmed the Final Summary Judgment, and certified the issue as being one of great public importance to the motoring public. (App. 93-94). PETITIONERS seek review of that decision.

ISSUES

I. WHETHER THE DISTRICT COURT WAS CORRECT IN CONCLUDING THAT PURSUANT TO § 324.021(9)(b), FLA. STAT. (1989), WOLI IS NOT THE "OWNER" OF THE LEASED VEHICLE AND THEREFORE NOT LIABLE FOR THE LESSEE/ DRIVER'S NEGLIGENCE?

II. WHETHER APPLYING § 324.021(9)(b) TO ACCIDENTS OCCURRING SUBSEQUENT TO ITS EFFECTIVE DATE, AUGUST 6, 1986, IS NOT A RETROACTIVE APPLICATION, REGARDLESS OF THE DATE OF EXECUTION OF THE LEASE AGREEMENT?

III. WHETHER PETITIONERS HAVE FAILED TO MEET THEIR BURDEN OF CLEARLY DEMONSTRATING THAT § 324.021(9)(b) IS UNCONSTITUTIONAL?

SUMMARY OF ARGUMENT

The Third District Court of Appeal was correct in affirming the Final Summary Judgment in favor of WOLI. There exists no genuine issue of material fact, and WOLI is entitled to judgment as a matter of law.

Pursuant to § 324.021(9)(b), WOLI is not to be considered the "owner" of the leased vehicle for the purpose of determining financial responsibility for the operation thereof or the acts of the operator in connection therewith. Since there is compliance herein with all the provisions contained in § 324.021(9)(b), WOLI is not the "owner" of the vehicle for purposes of imposing tort liability for PETITIONERS' injuries.

Section 324.021(9)(b) takes precedence over any prior case law or statute. The all-encompassing language set forth in § 324.021(9)(b) would include any common law liability of the lessor, if in fact it ever existed.

No constitutional right of access to the courts has been violated by § 324.021(9)(b) where: 1) the right to sue a lessor

was not a right recognized at common law; 2) the right to sue a lessor was not a statutory right predating 1968; and 3) even if either of the foregoing rights had been established, PETITIONERS have the right to seek full redress for their injuries against the lessee and/or CARVER. No other constitutional infirmity, either a violation of due process or equal protection, has been clearly established by PETITIONERS. Therefore, the decision of the Third District Court of Appeal is correct and should be affirmed.

ARGUMENT

I. THE DISTRICT COURT WAS CORRECT IN CONCLUDING THAT PURSUANT TO § 324.021(9)(b), FLA. STAT. (1989), WOLI IS NOT THE "OWNER" OF THE LEASED VEHICLE AND THEREFORE NOT LIABLE FOR THE LESSEE/DRIVER'S NEGLIGENCE.

A. PETITIONERS' INACCURACIES.

The Third District held that where WOLI and its lessee complied with the provisions of § 324.021(9)(b), Fla. Stat. (1989), WOLI is no longer to be deemed the "owner" of the leased vehicle, so as to be vicariously liable for the negligence of CARVER. The Third District also held that WOLI was not liable as the owner of the leased vehicle where beneficial ownership was in the lessee at the time of the accident. Contrary to Petitioners' assertion in the very first sentence of their argument, the District Court never concluded, nor was it asked to conclude, that a lessor under a lease in excess of one year is not liable under the dangerous instrumentality doctrine. Likewise, Petitioners' statement that in reaching its conclusion, the District Court relied "solely" on Perry v. G.M.A.C. Leasing Corp., 549 So.2d 680 (Fla. 2d DCA 1989), and Kraemer v. General Motors Acceptance Corp., 556 So.2d 431 (Fla.

2d DCA 1989),[1] is inaccurate. The decision of the Third District reflects, on its face, that in addition to Perry and Kraemer, the Court relied upon § 324.021(9)(b), Fla. Stat. (1989), Raynor v. De La Nuez, 15 F.L.W. D694 (Fla. 3d DCA Mar. 13, 1990), and Folmar v. Young, 15 F.L.W. D366 (Fla. 4th DCA Opinion filed February 6, 1990).

PETITIONERS ask this Court to decide whether Perry and Kraemer:

> Correctly created an arbitrary distinction between short term and long term leases (neither of which terms are defined anywhere) and equated "beneficial ownership" with "possession and control." (Petitioners' Brief, p. 7).

It is respectfully submitted that PETITIONERS' requested undertaking would be futile in that neither Perry nor Kraemer were decided on the basis of a distinction between short and long term leases, nor did the decisions equate beneficial ownership with possession and control.

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[1]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 recently accepted jurisdiction to review Kraemer, Case No. 75,580. However, Kraemer does not involve § 324.021(9)(b), which is applicable to the case at bar.

PETITIONERS urge this Court to determine that Perry and Kraemer were incorrectly decided as the cases run contrary to "seventy years of case law" and because of the "untoward effects" these decisions will have on property, tax or bankruptcy law. PETITIONERS' mathematics is, apparently, as faulty as their reasoning. In 1931, Engleman v. Traeger, 136 So. 527 (Fla. 1931), this Court held that the lessor was not liable for the negligence of the lessee, under the dangerous instrumentality doctrine. This exception was based upon a statute, still in existence today in the form of §§ 320.01(3) and 320.02, which define an "owner" to be any person controlling a motor vehicle by right of lease, and which requires the lessee to obtain vehicle registration. PETITIONERS nowhere set forth the alleged "untoward effects" that will result on unrelated areas of the law should WOLI not be held liable for the negligence of CARVER pursuant to § 324.021(9)(b).

PETITIONERS' inaccuracies continue with the statement that prior to Perry and Kraemer, "every court in this state had found lessors liable" for the negligence of their lessees." In order not to infer any improper motives on PETITIONERS' part, WOLI would simply assert that through oversight, PETITIONERS failed to mention the cases cited in WOLI's prior Answer Brief, i.e., White v. Holmes, 103 So. 623 (Fla. 1925), and Engleman, supra, both of which excepted lessors from liability under the dangerous instrumentality doctrine.

In effect, PETITIONERS are requesting this Court to make several determinations, none of which control the outcome of this case. In order to reach an appropriate determination of the case

sub judice, it is respectfully submitted that this Court need not burden itself with: (1) determining a lessor's liability under a long term lease versus short term rental; (2) deciding whether or not there was, in fact, common law liability on the part of the lessor; and (3) whether beneficial ownership was transferred in the instant cause. PETITIONERS' "all out" attack on the area of law pertaining to lessor liability, when examined closely, amounts to nothing more than an attempt at smokescreening the truly pertinent issues involved.

If, as requested by PETITIONERS, this Court were to find that, and it is respectfully submitted that it should not: 1) a lessor had common law liability under the dangerous instrumentality doctrine; 2) that beneficial ownership remained in the lessor in the case at bar; and/or 3) what a short term versus long term lease actually is, these findings would still not be determinative of this cause. Stated simply, the only issue that need be determined by this Court is whether, pursuant to § 324.021(9)(b), Fla. Stat. (1989), WOLI is not vicariously liable as the "owner" of the leased vehicle allegedly involved in the subject accident.

To be concise, PETITIONERS' "analysis" of the state of the law on lessor liability is a structurally deficient "house of cards."[2]

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[2]PETITIONERS state that they are adopting portions of the petitioners brief in Raynor. To the extent that this Court deems this incorporation appropriate, WOLI adopts the amicus curiae brief of Florida Motor Vehicle Leasing Group filed in response thereto.

It is noteworthy that the Raynor petitioners conceded that § 324.021(9)(b) would operate to relieve a complying lessor from vicarious liability for the lessee's negligence.

B. § 324.021(9)(b).

The subject Lease Agreement entered into between WOLI and lessee required lessee to obtain insurance acceptable to WOLI with limits of not less than $100,000/$300,000 for bodily injury liability coverage and $50,000 for property damage liability coverage. Lessee obtained the requisite insurance which was in full force and effect on the date of the alleged accident with PETITIONER. The lease was for a period in excess of one year. Therefore, pursuant to § 324.021(9)(b), Florida Statutes (1989), WOLI is not deemed the "owner" of the vehicle so as to be liable for PETITITONERS' injuries. Section 324.021(9)(b) provides as follows:

> **Notwithstanding 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, **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**; further, this subsection shall be applicable so long as the insurance required under such lease agreement remains in effect. (Emphasis added.)[3]

Folmar, supra, 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

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[3]Other statutory definitions excluding certain lessors from "ownership" are found in § 316.003(26), 320.01(3) - defining "owner" as a person controlling a vehicle by right of lease.

> 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 dangerous 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).

PETITIONERS' requested interpretation ignores the last two lines of § 324.021(9)(b). WOLI is simply not liable for the vehicle's negligent operation by CARVER. 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, in Perry, supra, held in an identical situation that 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 requirements of § 324.021(9)(b) had been met.[4] Perry held that compliance with § 324.021(9)(b) mandates that a lessor, such as WOLI, not be deemed the owner of the leased

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[4]In Perry, the lease agreement was entered into on March 11, 1986, prior to the effective date of § 324.021(9)(b). (App. 13-15).

vehicle for purposes of the dangerous instrumentality doctrine. 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.
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> * * *
>
> Furthermore, plaintiff has not shown, . . . that there ever was a common law right of action under the dangerous instrumentality doctrine in Florida against a long-term lessor of a motor vehicle. . . . Accordingly, 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. Id. at 1739. (Emphasis added).

The absence of merit to PETITIONERS' position is highlighted by their contention as to the scope of subsection (b). PETITIONERS suggest that § 324.021(9)(b) merely operates to relieve lessors from the obligation to provide proof of financial responsibility. To clothe subsection (b) with the interpretation urged by PETITIONERS would render it a useless and superfluous act. What would be the purpose of § 324.021(9)(b), if it does not serve to relieve the lessor, who has complied with the provisions contained therein, from liability? The law is, and the Court must be mindful of, avoiding statutory interpretation which would result in a statute without meaning. If subsection (b) does not relieve the long-term lessor from liability, what is the purpose of the required increase of the lessor's liability insurance? It is respectfully submitted that there would be none.

PETITIONERS would have this Court adopt the following illogical conclusions:

(1) That § 324.021(9)(b) does not relieve lessors, who have complied with the provisions therein, from vicarious liability;

(2) That the lessor must arrange for insurance of greater amounts than the ordinary owner, without any resulting benefit; and

(3) That the legislature enacted a requirement of $100,000/$300,000/$50,000 coverage, which serves no purpose -- because according to PETITIONERS, notwithstanding the fulfillment of that requirement, the lessor still remains the "owner," for purposes of imposing tort liability.

If PETITIONERS' interpretation of the statute is adopted, **from what exact responsibilities of ownership is the long-term lessor being relieved, if not from vicarious liability?**

PETITIONERS' interpretation of § 324.021(9)(b) is inappropriate, as stated in Folmar, supra, and Perry, supra, because of its failure to recognize that lessors merely had the obligation to provide proof of financial responsibility in the amount of $10,000/$20,000, prior to 1986.

If PETITIONERS' interpretation of subsection (b) is accepted, i.e., that the requisite $100,000/$300,000 insurance coverage simply relieves the lessor from its obligation to provide proof of financial responsibility, what maze-like interpretation would PETITIONERS adopt for subsection (a), which contains no insurance requirements whatsoever? How can PETITIONERS "maneuver" their interpretation so that both subsections can be read in pari materia? Rather than twisting and contorting both subsections for the sole purpose of saving PETITIONERS' access to a deep-pocket defen-

dant, the clear language of § 324.021(9)(b) must be accepted. It is an exception to the dangerous instrumentality doctrine.

The only outcome of the interpretation urged by PETITIONERS is that subsection (b) would then, in fact, be unconstitutional, because it would impose insurance requirements on lessors in vastly greater amounts than those of the ordinary vehicle owner, with no resulting benefits. If every other titleholder, in the State of Florida, is required to only provide proof of financial responsibility in the amount of $10,000/$20,000, why would a long-term lessor be required to have coverage of $100,000/$300,000 coverage in order not to be subject to the sanctions imposed by § 324.051?

> It is elementary that a statute is clothed with a presumption of constitutional validity, and if fairly possible a statute should be construed to avoid not only an unconstitutional interpretation, but also one which even casts grave doubts upon the statute's validity. State v. Metz Construction Co., Inc., 285 So.2d 598, 600 (Fla. 1973).

PETITIONERS' requested interpretation of subsection (b) goes well beyond the level of "grave doubts." Their interpretation is tantamount to unconstitutionality.

Section 324.021(9)(b), by its express terms, is applicable regardless of "any other provision of the Florida Statutes or existing case law." This all encompassing language must be deemed to include both case-law-imposed and statutory liability of a lessor under the dangerous instrumentality doctrine. Likewise, this language would encompass any common law liability of the lessor. After all, "common law" is nothing more than case law and statutory law.

Even had there been a common law right of action against the lessor under the dangerous instrumentality doctrine, § 324.021(9)(b) would clearly have vitiated that right, not only by its express terms, but also by implication. Broward v. Broward, 117 So. 691 (Fla. 1928). This is so because 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). Statutes take precedence over common law if the two are inconsistent. Matthews v. McCain, 170 So. 323 (Fla. 1936).

It is respectfully submitted that this Court should not depart from the statute's clear language to vary what the legislature has so unequivocally stated. Citizens of State v. Public Service Comm'n, 425 So.2d 534 (Fla. 1982); Tatzell v. State, 356 So.2d 787 (Fla. 1978).

C. SECTION 324.021(9)(a).

PETITIONERS' interpretation is also misguided in view of § 324.021(9)(a), Fla. Stat. the other subsection of § 324.021(9). Section 324.021(9)(a), enacted in 1955, thirty-one years prior to the enactment of subsection (b),[5] states as follows:

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[5]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.

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

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 also exclude lessors, who have given their lessees the rights enunciated in subsection (a), from the definition of "owner", and from liability. Thus, in 1955, § 324.021(9)(a) established a further exception to the dangerous instrumentality doctrine, then in existence.

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),[6] involving a statute identical to subsection (a), the

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[6]It has previously been noted that the vicarious liability imposed under the dangerous instrumentality doctrine in Florida is "closely allied" with that of the District of Columbia. Hertz

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.

Corp. v. Dixon, 193 So.2d 176 (Fla. 1st DCA 1966).

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."
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> * * *
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> 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 held the 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 Ins. Co., 445 P.2d 325 (Wash. 1968), involves the following statute:

> 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.
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> 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," 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), and 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).

Section 324.021(9)(a) relieves the lessor from liability 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. 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. Both subsections must be read so as to achieve a consistent goal, i.e., exemption from liability to complying lessors. 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 Petitioners' access to a potential deep-pocket defendant, which is not a constitutionally protected right.

D. THE DANGEROUS INSTRUMENTALITY DOCTRINE IS NOT ABSOLUTE IN ITS APPLICATION.

Contrary to what PETITIONERS 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. PETITIONERS have donned blinders so as to prevent the glaring reality of the law to penetrate their arguments.

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. Raftery, 353 So.2d 903 (Fla. 4th DCA 1977); or 3) a bailee passenger who had entrusted its operation to a negligent 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, supra. 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 Volkswagen, 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 PETITIONERS' protestations, there is nothing inconceivable about exempting a lessor, for longer than one year, from liability under § 324.021(9)(b), where an owner is relieved from liability, merely by turning over his vehicle to a valet service for five minutes.

Additionally, in Kraemer, supra, the Court analogized the lessor's position to that of a conditional vendor. The Second District held that the 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, supra.

E. PERRY AND KRAEMER WERE CORRECTLY DECIDED.

It is respectfully submitted that PETITIONERS' attempts to show that the Second District Court of Appeal was "misguided" in the Perry and Kraemer decisions, are totally devoid of merit.

PETITIONERS attempt to discredit Perry and Kraemer by citing to cases where lessors of motor vehicles were held liable.[7] 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 PETITIONERS fail, and/or refuse to recognize, is that neither the Perry nor Kraemer decisions stand or fall on whether a lessor of a vehicle was ever held liable for the negligence of the lessee at common law or prior to the enactment of § 324.021(9)(b). The explicit language in Perry simply stated, that no authority, establishing a common law right of action against a long-term

[7]PETITIONERS state 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 was ever presented to those Courts.

lessor could be found,nor had the plaintiff cited to any case establishing same.[8]

Thus, in an attempt to discredit both Perry and Kraemer, PETITIONERS have incorrectly assumed: 1) that Perry and Kraemer held that a lessor had never previously been held liable under the dangerous instrumentality doctrine for the negligence of a lessee; 2) that Perry and Kraemer turn on the issue of short term rentals versus long-term leases; and 3) that Perry was decided on the basis of beneficial ownership. PETITIONERS' Brief, built on these faulty "foundations," cannot withstand even the proverbial fairy tale "huffing and puffing."

Perry deals with § 324.021(9)(b), Fla. Stat. (1986), which is applicable to the instant cause. Contrary to PETITIONERS' 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 liability for the negligence of the lessee, regardless of how or if that liability ever arose. PETITIONERS attack Perry as incorrect because lessors were held liable under the dangerous instrumentality doctrine, prior to subsection (b)'s enactment. This over-simplistic approach to demean the holding of Perry cannot withstand judicial scrutiny. The survival of Perry does not depend

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[8]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.

upon whether or not a lessor had ever been held liable for the negligence of a lessee. Parading citations before this Court to cases where a lessor had been held liable, are of no avail where neither subsection (a) nor (b) was in issue. In sum, PETITIONERS have completely "missed the mark." 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.

In Kraemer, supra, the Second District held that the 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 was not liable as it 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." Similar 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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> 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 dangerous instrumentality doctrine. Id. at D.82 (emphasis added).

The same indicia of beneficial ownership that was found to be lacking in the lessor therein, is also lacking in WOLI.

PETITIONERS have 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 clear 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 Kraemer, the lessee is solely responsible for: 1) maintenance of the leased vehicle; 2) repairs to keep the leased vehicle in good working order; 3) any other expenses associated with operating the leased vehicle; 4) servicing the leased vehicle according to the manufacturer's recommendations set forth in the owner's manual; 5) payment of title expenses; 6) payment of all registration fees; 7) payment of all licensing fees; 8) payment of all inspections required by governmental authority; 9) payment of all excise, use, personal property, gross receipts and other taxes incurred with respect to

the leased vehicle; and 10) indemnification to WOLI as a result of all losses, damages, injuries, claims, demands and expenses arising out of the operation of the vehicle.

On the other hand, the short-term renter has no such obligations. 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. 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.

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 the fashion at issue, is relieved of responsibility for injuries arising from its negligent operation.

PETITIONERS' assertions are incorrect that real property law does not support the reasoning of the court in Kraemer, regarding the transfer of beneficial ownership to the lessee. A tenant's interest in a leasehold estate during the term of the lease is for all practical purposes the equivalent of absolute ownership and ownership of fee simple title, as the tenant has the exclusive

right of possession. Gray v. Callahan, 197 So. 396 (Fla. 1940); West's Drug Stores, Inc. v. Allen Inv. Co., 170 So. 447 (Fla. 1936); Baker v. Clifford-Mathew Inv. Co., 128 So. 827 (Fla. 1930); Rogers v. Martin, 99 So. 551 (Fla. 1924).

F. COMMON LAW LIABILITY.[9]

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.[10] 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, supra.

> 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 hiring 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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[9]WOLI hesitates to even present this point as WOLI 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. WOLI presents this point "under protest" with no intent of legitimizing PETITIONERS' argument of whether a lessor was held liable prior to 1986. It is not WOLI's desire to spread, any further, the smoke screen that PETITIONERS have presented to cloud these proceedings.

[10]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 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.[11]

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, supra.

> 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

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

> 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 sought 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 degree 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 dangerous 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 recognized in the particular case where the statute[12] expressly permitted a bailment 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 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, supra.

> 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).

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[12]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.

The unifying thread running through all of these cases required something other than mere ownership prior to the imposition of liability. 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. The issue in Perry was whether subsection (b) vitiated any liability of the lessor, regardless of if, how and/or when the liability first arose.

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 previously. Rather, the issue was whether a lessor, who had complied with subsection (b) would be held liable thereafter.

G. THE DANGEROUS INSTRUMENTALITY DOCTRINE IS A FINANCIAL RESPONSIBILITY PRINCIPLE LIMITED BY § 324.021(9)(b).

PETITIONERS contend that § 324.021(9)(b) should not be construed so as to limit the application of the dangerous instrumentality doctrine on the basis that Chapter 324 addresses only financial responsibility. PETITIONERS would have this Court hold that the dangerous instrumentality doctrine and § 324.021(9)(b) are totally unrelated. It is apparent that PETITIONERS have misconstrued either the dangerous instrumentality doctrine, Chapter 324 of the Florida Statutes, or both. It is

noteworthy that PETITIONERS have cited no cases in support of this position.

Section 324.011, Florida Statutes (1989), delineating the purpose of the financial responsibility law, states as follows:

> It is the intent of this Chapter to recognize the existing rights of all to own motor vehicles and to operate them on the public streets and highways of this state when such rights are used with due consideration for others; to promote safety, and provide financial security by such owners and operators **whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, it is required herein that the operator of a motor vehicle involved in an accident shall respond for such damages** and show proof of financial ability to respond for damages in future accidents as a requisite to his future exercise of such privileges. (Emphasis added.)

Patently, the Financial Responsibility Law and the dangerous instrumentality doctrine are inextricably interrelated. In fact, the dangerous instrumentality doctrine is an expression of a financial responsibility principle. Insurance Company of North America v. Avis Rent-A-Car System, Inc., 348 So.2d 1149 (Fla. 1977).

> To this end the law requires motor vehicle owners to provide liability insurance coverage for the operation of motor vehicles on the highways of this state. Independent of this insurance requirement is the common law obligation of vehicle owners under the dangerous instrumentality doctrine. **But neither of these financial responsibility principles** . . . Id. at 1153. (Emphasis added).

Section 324.021(9)(b) clearly establishes that WOLI is no longer considered financially responsible and/or the "owner" for the application of the dangerous instrumentality doctrine. Id.

H. THE LEGISLATIVE INTENT WAS CLEARLY TO EXEMPT LESSORS, SUCH AS WOLI, FROM LIABILITY UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE.

It is respectfully submitted that § 324.021(9)(b), being clear and unambiguous, need not be subjected to statutory construction machinations to determine its meaning. However, these "machinations" only further buttress WOLI's position. The House of Representatives' Debate on Bill 902 (amendment to § 324.021, Fla. Stat.) shows clearly that the Legislature intended the import of the words used in § 324.021(9)(b). (App. 6-9). The Legislature was not ignorant of the fact that the Amendment, here in issue, would except the lessor from liability under the dangerous instrumentality doctrine for damages arising from the use of the vehicle by the lessee.

In the instant case, there is a clear manifestation of legislative intent, which is the polestar of judicial construction. Lowry v. Parole and Probation Comm'n, 473 So.2d 1248 (Fla. 1985). This is true where reasonable differences arise as to the meaning or application of the statute although, in the instant case, there are no such differences. In the matter sub judice, it is even more compelling since the legislative intent shows that § 324.021(9)(b) states exactly what the Legislature intended in a clear and unequivocal manner: exempting certain lessors from the application of the financial responsibility law, i.e., the dangerous instrumentality doctrine, regardless of how the liability arose. The Debate shows as follows:

> Representative Dudley: As most of you know under current law, and I think the law of all states, the owner of an automobile is financially responsible for damages caused

> when that car is involved in an accident or that motor vehicle, as I understand the amendment as it has been explained on the House floor, would say that the lessor of an automobile, the owner who is allowing someone else to use it would be avoiding that liability . . . . Further debate Representative Woodruff for what purpose, speak against the Amendment. You are recognized. Ladies and gentlemen, what Mr. Meffert is trying to do is trying to get certain people out from responsibility as having an ownership of an automobile, at the present time, Florida has a dangerous instrumentality rule. . . . Representative Gallagher, Mr. Speaker, Ladies and Gentlemen of the House, listen to what Mr. Upchurch says, what he is saying is that we are treating a lease that is for one year or longer very similar to a purchase. . . . (Emphasis added.)

The legislative intent is extraordinarily clear. In fact, § 324.021(9)(b) reflects the precise nature of the legislature's intent. One of the legislature's unequivocal purposes was to eliminate double insurance premiums, by relieving a lessor/legal titleholder from liability as an owner of a motor vehicle when there is in existence a lease for one year or longer and the lessee complies with the required insurance limits. Pursuant to the legislative debate, it is obvious that the dangerous instrumentality doctrine, a financial responsibility principle, is being limited in its application. In view of the debate on the subject amendment and mindful of the clear import of the language used, PETITIONERS' contention that § 324.021(9)(b) does not relieve the long-term lessor/owner from liability cannot pass judicial muster.

Contrary to PETITIONERS' contention, this Court may use the legislative debate, for its analysis of § 324.021(9)(b). Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla. 1974).

> From an analysis of the statute itself, together with such other sources as legislative debate, law review commentary and opinions of other courts discussing the constitutional validity of analogous laws, we have

> concluded that the legislative objectives involved here . . . . Id. at 16.

Likewise, in Vildibill v. Johnson, 492 So.2d 1047 (Fla. 1986), the testimony of the sponsors of an amendment was considered.[13] It was not necessary, prior to this Court's consideration of the legislative debate, to have the legislative debate introduced into evidence at the trial court level. The legislative debate is merely a tool that this Court may use in its independent research. Ellsworth v. Insurance Co. of North America, 508 So.2d 395 (Fla. 1st DCA 1987).

On the other hand, the legislative staff summary contained in PETITIONERS' Appendix, pages 6-12, cannot be considered on the issue of legislative intent, as the analysis was never introduced at the trial court level. Department of Health & Rehab. Serv. v. Shatto, 487 So.2d 1152 (Fla. 1st DCA 1986). Also the analysis dated July 28, 1986 should not be considered as it was rendered subsequent to the bill's presentment to the governor. Ellsworth, supra.

It is respectfully submitted that PETITIONERS' attempted interpretation of § 324.021(9)(b) is without merit. Section 324.021(9)(b) is clear and unambiguous on its face and establishes that WOLI is not to be considered the "owner" for the injuries

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[13]The case cited by Appellants, i.e., Fields v. Zinman, 394 So.2d 1133 (Fla. 4th DCA 1981), would not consider affidavits by members of the legislature as to their subjective intent, where it was not shown that this intent was ever expressed to other members of the legislature. Unlike the Fields case, the legislative debate, by its nature, clearly involved an expression of intent to other members.

sustained by PETITIONERS. The Third District decision should be affirmed.

II. APPLYING § 324.021(9)(b) TO ACCIDENTS OCCURRING SUBSEQUENT TO ITS EFFECTIVE DATE, AUGUST 6, 1986, IS NOT A RETROACTIVE APPLICATION, REGARDLESS OF THE DATE OF EXECUTION OF THE LEASE AGREEMENT.

PETITIONERS state that "the statute cannot apply to leases entered into before its effective date." However, it is respectfully submitted that § 324.021(9)(b) does not apply to the lease entered into between WOLI and its lessee, but rather to PETITIONERS' cause of action which accrued in 1989, subsequent to subsection (b)'s enactment. PETITIONERS' "retroactive" argument is totally without merit, and is nothing more than an attempt at muddying the otherwise clear issues in this matter.

PETITIONER, JACINTO ABDALA, was allegedly injured on February 23, 1989. That § 324.021(9)(b), enacted in 1986, exempts WOLI from liability for the accident occurring on February 23, 1989, three years later, is not, by any stretch of legal imagination, a retroactive application of the statute. Section 324.021(9)(b) does not: 1) interfere with a contractual right of PETITIONERS; 2) destroy a right of PETITIONERS that vested prior to the statute's enactment; or 3) create a new liability in connection with a past transaction. Thus, there is no retroactive application. Re Seven Barrels of Wine, 83 So. 627 (Fla. 1920).

> A statute is not unconstitutionally retrospective in its operation unless it impairs a substantive, vested right. A substantive, vested right is an immediate right of present enjoyment, or a present fixed right of future enjoyment. . . . To be vested, a right must be more than a mere expectation based on anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future

> enforcement of a demand. . . . This mere possibility of sharing in trust proceeds in the future is hardly an interest of such substance as to be entitled to constitutional protection. In re Will of Martell, 457 So.2d 1064, 1067 (Fla. 2d DCA 1984).

PETITIONERS had no vested rights until the accident occurred in 1989. Through the date hereof, PETITIONERS have no vested interest at all in the lease agreement between WOLI and lessee. The mere prospect that a plaintiff might recover damages, in a tort claim, from a defendant, is not a vested right. Lamb v. Volkswagenwerk Aktiengesellschaft, 631 F. Supp. 1144 (S.D. Fla. 1986). Since PETITIONERS' claim did not become vested prior to the effective date of § 324.021(9)(b), there is no retroactive application of the statute. Id.

Moreover, no one had a vested right in a particular remedy or rule of procedure in existence at the time the lease was made.

> The remedial law in force at the time the contract is made, entered into and becomes a part thereof, but the parties to the contract have no vested right under the contract clause of the federal Constitution, and the particular remedy or modes of procedure then existing. It may be assumed that the parties made their contract with knowledge of the power of the state to change the remedy or method of enforcing the contract, which may be done by a state without impairing contract obligations. . . . A State may by legislative enactment modify existing remedies and substitute others without impairing the obligation of contracts. . . . Mahood v. Bessemer Properties, Inc., 18 So.2d 775, 779-80 (Fla. 1944).

Since § 324.021(9)(b) does not have the effect of rewriting the contract entered into between lessee and WOLI (the parties to the contract), i.e., no substantive rights of WOLI and/or lessee were changed, there is no retroactive application. Manning v. Travelers Ins. Co., 250 So.2d 872 (Fla. 1971).

Indeed, § 324.021(9)(b) only reaffirms paragraph 28 of the Lease Agreement, which provides that the lessee is responsible for all claims arising from the use of the leased automobile. Because § 324.021(9)(b) neither alters the substance of nor detracts from the value of the lease agreement, in any manner, there is no retroactive application. Pinnellas County v. Banks, 19 So.2d 1 (Fla. 1944). Furthermore, since § 324.021(9)(b) neither impairs the contractual relationship of WOLI and lessee, nor alters any rights of PETITIONERS vested as of the enactment date, this argument of PETITIONERS' must also fail. United States Fidelity & Guar. Co. v. Department of Insurance, 453 So.2d 1355 (Fla. 1984).

It is respectfully submitted that PETITIONERS do not even have the requisite standing to present the retroactive argument regarding the lease, to which they were not a party. See State v. Saiez, 489 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).

All of the cases cited by PETITIONERS, in support of their retroactive application argument, deal with statutes that effect contracts entered into prior to the date of the statutes. Fleeman v. Case, 342 So.2d 815 (Fla. 1977), involved a statute prohibiting escalation clauses in certain types of leases. The Court held that the statute did not apply to contracts, having such provisions, entered into prior to the date of the statute. However, § 324.021(9)(b) does not operate to change any contractual rights then existing between WOLI and lessee. Certainly, it cannot be

said that the lease agreement contained any provision whereby WOLI agreed to be liable for the negligent acts of its lessee.

III. PETITIONERS HAVE FAILED TO MEET THEIR BURDEN OF CLEARLY DEMONSTRATING THAT § 324.021(9)(b) IS UNCONSTITUTIONAL.

A. SECTION 324.021(9)(b), BY EXCLUDING WOLI FROM THE DEFINITION OF OWNER, DOES NOT VIOLATE PETITIONERS' RIGHT OF ACCESS TO THE COURTS.

PETITIONERS also argue that § 324.021(9)(b) is unconstitutional because it denies them access to the courts. This constitutional attack of PETITIONERS must fail for many reasons. The seminal case of Kluger v. White, 281 So.2d 1 (Fla. 1973), dealing with the constitutional right of access to the courts, stated:

> [W]here a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the state pursuant to Fla. Stat. § 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the state to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown. Id. at 4.

PETITIONERS have not been deprived of a right of access to the Courts for redress of their injuries. PETITIONERS are still free to seek redress for their injuries from CARVER and the lessee. The constitutional mandate, requiring access to the Courts, does not speak in terms of having a particular number of defendants to sue, but rather, "redress for a particular injury."

Additionally, Kluger holds that the constitutional protection exists only where the right of access to the courts has been: 1) established by statutory law in existence prior to the adoption

of the Declaration of Rights of the Florida Constitution, i.e., 1968; or 2) where the right had become part of the common law of Florida pursuant to § 2.01, Fla. Stat. It is respectfully submitted that: 1) no statutory law existed prior to 1968 authorizing suit against a lessor for the negligent acts of its lessee; and 2) the right to sue a lessor for the negligent acts of the lessee did not exist at common law pursuant to § 2.01, Fla. Stat., as this right was not established until the twentieth century, by caselaw. White, supra.

Thus, since PETITIONERS' "right" to sue WOLI is not afforded constitutional protection, § 324.021(9)(b) is not constitutionally infirm. Furthermore, because § 324.021(9)(b) has not abolished a statutory or common law right of action protected by article I, section 21, no constitutional violation has occurred. See, Overland Construction Co., Inc. v. Sirmons, 369 So.2d 572 (Fla. 1979); Perry, supra.

Assuming, arguendo, that a common law or statutory right, predating 1968, did exist in PETITIONERS' favor, § 324.021(9)(b) would still not violate Florida's constitutional right of access to the courts.

> Unlike the statutes involved in Smith and Kluger, section 324.021(9)(b) does not place a cap upon damages. It does not limit plaintiff's right to recover damages from the lessee who controls the operation of the vehicle. Nor does it place a cap upon those damages. It essentially only mandates that a long term lessor shall not under certain circumstances be deemed the owner of the motor vehicle for purposes of the dangerous instrumentality doctrine. Perry, supra at 681.

"We, therefore, do not believe the statute violates article I, section 21, although it is true that it eliminates a possible deep-

pocket." Folmar, supra at D368. The Legislature has neither totally abolished nor eliminated PETITIONERS' right to recover for their injuries. The elimination of one possible ground for relief does not require the Legislature to provide some replacement. Jetton v. Jacksonville Electric Authority, 399 So.2d 396 (Fla. 3d DCA 1981).

> The Constitution does not require the substitute remedy unless the legislative action has abolished or totally eliminated the previously recognized cause of action. As discussed in Kluger, and borne out in later decisions, no substitute remedy need be supplied by legislation which reduces but does not destroy a cause of action. The Court pointed out that legislative changes in the standard of care required, making recovery for negligence more difficult, impede but do not bar recovery, and so are not constitutionally suspect. Id. at 398.

In the instant case, PETITIONERS' right to seek redress has not been abolished. The Legislature has clearly stated that the lessee and/or CARVER are the parties against whom relief must be sought. This is not violative of PETITIONERS' right to "redress of any injury" guaranteed by the Constitution. White v. Hillsborough County Hosp. Auth., 448 So.2d 2 (Fla. 2d DCA 1983).

> Here, the right of an injured party to seek redress has not been abolished. Rather, the Legislature has merely substituted the state and its agencies, which previously could not be sued because of the sovereign immunity, for the individuals who could have been sued. . . . Thus, appellant's cause of action has not been destroyed but has been converted to an action against a state agency. Id. at 3.

Even where a cause of action is reduced, as opposed to being totally destroyed, the Legislature need not provide a substitute remedy. Id. PETITIONERS still can seek redress against the active tortfeasor. THERE IS NO CONSTITUTIONAL RIGHT TO A "DEEP POCKET"

DEFENDANT. THERE IS NO CONSTITUTIONAL RIGHT GUARANTEEING THE COLLECTABILITY OF JUDGMENTS.[14]

Since § 324.021(9)(b) does not abolish a statutory or common law right of action,[15] it was not necessary for the legislature to provide a reasonable alternative. Nevertheless, § 324.021(9)(b) does establish a reasonable alternative, i.e., a requirement of $100,000/$300,000 bodily injury liability protection for the motorists of the State of Florida. While the ordinary owner or operator of a motor vehicle must only maintain $10,000/$20,000 coverage, the lessor, under subsection (b), is relieved from liability only when insurance of a much larger amount is in effect.

While PETITIONERS express an inability to conceive of any possible benefit being conferred upon the public as a result of the requisite $100,000/$300,000 insurance requirement, the realities of today's insurance crisis supply the "reasonable alternative." In 1985, 63% of cars in Dade County were not insured, as compared to 31% in Palm Beach and Broward Counties. (App. 33). In various portions of Miami alone, 60% of accidents involve uninsured motorists. (App. 33). Of the 350,000 accidents reported each year in the State of Florida, 80,000 involve uninsured motorists. (App. 33). Florida ranks third among all states in claims involving uninsured motorists. (App. 33). In Miami alone, a recent insurance industry study found that for every ten claims of bodily

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[14]It is interesting that PETITIONERS never sued the lessee, Jane Carver.

[15]Unlike the cases cited by PETITIONERS, § 324.021(9)(b) neither places a cap on the damages PETITIONERS can recover nor totally abolishes a right to seek redress for their injuries.

injury made, 3.7 were caused by uninsured motorists. (App. 33). Thirty-one percent of Florida cars are uninsured. (App. 33). Of course, this does not take into account the percentage of cars that, albeit having minimal coverage, do not have insurance in sufficient amounts so as to recompense others who are injured.

The civil tort study conducted for the Eleventh Judicial Circuit illustrates that 100% of damages awarded for automobile negligence in jury trials, conducted from January 1985 through March 1986, involved judgments of $50,000 or less. (App. 38). For the time period April 1986 through March 1987, 100% of the damages awarded for automobile negligence, in jury trials, involved judgments of $25,000 or less. (App. 68).

Therefore, although there was absolutely no requirement to provide a reasonable alternative, as no common law or statutory right was abolished, § 324.021(9)(b), in requiring $100,000/ $300,000 insurance coverage for the protection of others, clearly is a reasonable alternative. However, it is respectfully submitted that this Court need not even address this aspect of PETITIONERS' argument.

B. PETITIONERS HAVE FAILED TO MEET THEIR BURDEN OF SHOWING A VIOLATION OF DUE PROCESS AND/OR EQUAL PROTECTION.

After attempting to have this Court accept the proposition that the Legislature did not mean exactly what it said in § 324.021(9)(b), PETITIONERS argue, predictably, that assuming the Legislature did mean exactly what it said, the statute is unconstitutional for a variety of reasons.

The law is well established in holding that the burden is upon the party challenging the constitutionality of a statute to demonstrate clearly that it is, in fact, invalid.

> Initially it should be observed and thereafter constantly kept in mind that one who asserts the unconstitutionality of an act of the Legislature has the burden of demonstrating clearly that such act is indeed invalid. We find that Petitioner herein has failed to carry this burden. Village of North Palm Beach v. Mason, 167 So.2d 721, 726 (Fla. 1964).

It is equally well settled that statutes are presumed to be constitutional and should be so construed if at all possible. Gulfstream Park Racing Association, Inc. v. Department of Business Regulation, 441 So.2d 627 (Fla. 1983).

> For appellees' argument to be accepted, the court must find the challenged statutes to be unconstitutional on their face. In determining this issue, we must bear in mind that any legislative enactment carries a strong presumption of constitutionality, including a rebuttable presumption of the existence of necessary factual support in its provisions. State v. Bales, 343 So.2d 9, 11 (Fla. 1977).

This Court must, if reasonably possible, resolve all doubts as to the validity of § 324.021(9)(b), in favor of its constitutionality. Powell v. State, 345 So.2d 724 (Fla. 1977); Burnsed v. Seaboard Coast Line Railroad Co., 290 So.2d 13 (Fla. 1974).

> Every presumption should be indulged in favor of the validity of a statute, and the statute should be considered in the light of the principle that the state is primarily the judge of regulations in the interest of public safety and welfare. Id. at 19.

If a statute may reasonably be construed in more than one manner, the Court is under an obligation to adopt a construction that

comports with the dictates of the Constitution, i.e., upholding its constitutionality. Vildibill, supra.

PETITIONERS' constitutional challenges are inappropriate. "The legislature is vested with wide discretion to determine the public interest and the measures necessary for its achievement." Fraternal Order of Police, Metropolitan Dade County Lodge No. 6 v. Department of State, 392 So.2d 1296, 1302 (Fla. 1980).

> The Legislature has wide discretion in creating statutory classifications. There is a presumption in favor of the validity of the Statute which treats some persons or things differently from others.
> [I]f any state of facts can reasonably be conceived that will sustain the classification attempted by the Legislature, the existence of that state of facts at the time the law was enacted will be presumed by the courts. The deference due to the legislative judgment in the matter will be observed in all cases where the court cannot say on its judicial knowledge that the Legislature could not have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made. Id. at 1302-1303. (Emphasis added).

It is respectfully submitted that this Court must sustain § 324.021(9)(b) if any realistic and rational set of facts may be conceived to support it. Id. That a statute results in some inequality will not render it unconstitutional. Loxahatchee Revert Envtl. Control Dist. v. School Bd. of Palm Beach County, 496 So.2d 930 (Fla. 4th DCA 1986). In order to be invalid, a statute "must be so disparate in its effect as to be wholly arbitrary." Id. at 938.

> It is not the court's function to determine whether the legislation achieved its intended goal in the best manner possible, but only whether the goal is legitimate and the means to achieve are rationally related to the goal. Id. at 938.

In the instant case, it is not difficult to find a legitimate goal for § 324.021(9)(b).

> The legislation was enacted, in part, to eliminate the imposition of double premiums. Although the plaintiffs argue that the statute creates a discriminatory[16] classification, since lessors remain liable on short-term leases, the legislative history indicates that leases exceeding one year are nothing more than alternative financing agreements which provide a tax advantage to the lessee. Therefore, there is a rational basis for the classification. It would not appear to be unfair to excuse the long-term lessor from vicarious liability when the lessor has no control over the vehicle. Folmar, supra at D368.

The Legislature has analogized the lessor/owner of a vehicle, under a lease for a period of one year or longer, to that of a seller, who relinquishes all control and dominion over the motor vehicle. This is similar to the other limitations imposed upon the dangerous instrumentality doctrine. 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 is relieved of responsibility for injuries arising from its operation.

> The fact that the Legislature may not have chosen the best possible means to eradicate the evils perceived is of no consequence to the court provided the means selected are not wholly unrelated to achievement of the legislative purpose. A more rigorous (decree) would amount to a determination of the wisdom of the legislation . . . and would usurp the legislative prerogative to establish policy. Fraternal Order, supra, at 1302.

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[16]PETITIONERS are without standing to argue as to any alleged discrimination arising from facts not existing in this matter, i.e., short term leases, etc. Saiez, Daytona Beach and Osterndorf, supra.

This Court's function, it is respectfully submitted, is not to determine whether § 324.021(9)(b) achieves its goal in the best manner possible. Loxahatchee, supra. The fact that a statute does not actually accomplish its intended goals is not a ground for holding it unconstitutional. United States Fidelity & Guar. Co. v. Department of Insurance, 453 So.2d 1355 (Fla. 1984). The only determination to be made is whether the goal of § 324.021(9)(b) is legitimate and the means to achieve it are rationally related to that goal. Id.

> It should be remembered that a statutorily created classification need not be perfect; nor must the legislature, in the interest of equal protection, either solve all facets of a problem at once or leave the problem wholly unsolved. Id. at 938.

It is not this Court's function to determine the wisdom of § 324.021(9)(b). Pfeiffer v. City of Tampa, 470 So.2d 10 (Fla. 2d DCA 1985). This Court's construction of § 324.021(9)(b) need not "produce what the Court might perceive to be a wise result." Id. at 17.

This separate treatment of lessors/legal title holders under leases for one year or longer does not constitute "an invidious discrimination if there is a rational basis for separate treatment." Fraternal Order, supra. at 1302. It is respectfully submitted that the Legislature could, and did, rationally conclude that the lease, being more in the nature of a sale, should serve to relieve the lessor from liability for the operation of the motor vehicle since the lessor is not in a position to exercise any control over the motor vehicle.

> Furthermore, the fact that the Legislature chose not to deal with the possibility of abuse by solicitors from non-profit organizations does not invalidate Part II of Chapter 496 on equal protection grounds. The United States Supreme Court has repeatedly said that the Legislature is free to regulate perceived evils one step at a time, addressing itself first to the face of the problems which seem most acute to the Legislative mind . . . so long as the classification is based upon practical differences, such as peculiar opportunities for abuse and oppression in a particular class singled out for regulation, it is not unconstitutional. Fraternal Order, supra, at 1303. (Emphasis added).

Section 324.021(9)(b) need only be reviewed upon the "rational basis" standard. The Florida High School Activities Ass'n, Inc. v. Thomas, 434 So.2d 306 (Fla. 1983). The only inquiry to be made by this Court is whether it is conceivable that § 324.021(9)(b) bears some rational relationship to a legitimate state purpose. Id.

> The burden is upon the party challenging the statute or regulation to show that there is no conceivable factual predicate which would rationally support the classification under attack. When the challenging party fails to meet this difficult burden, the statute or regulation must be sustained. Id. at 308. (Emphasis added).

"It is not the function nor the prerogative" of this Court to speculate on the construction of § 324.021(9)(b) when the language of the statute "itself conveys an unequivocal meaning." Pfeiffer v. City of Tampa, 470 So.2d 10, 16 (Fla. 2d DCA 1985). PETITIONERS have failed to present a clear demonstration that § 324.021(9)(b) is unconstitutional.

PETITIONERS' argument that, in effect, long-term lessors are better able to spread losses and/or provide for their indemnification, is not one of first impression before the courts of this state. In fact, the same argument was made against the elimination of joint and several liability. There too, the

plaintiff's argument as to the solvency of a defendant, carried no weight.

> Further, it is argued that, in accordance with the philosophy of Hoffman, the principles of fairness require the elimination of joint and several liability by making each party's liability dependent upon his degree of fault--not on the solvency of his co-defendants--and that fairness requires at least a modification of joint and several liability in order to balance the system. In response, it is argued that, given a choice between requiring an innocent plaintiff to incur the loss or requiring a defendant to pay more than his proportionate share, the choice should be the defendant because he is better able to spread the loss among all consumers by the insurance conduit. Smith v. Department of Insurance, 507 So.2d 1080, 1091 (Fla. 1987). (Emphasis added).

It was not decided that the solvent defendant should pay more than his proportionate share.

Although PETITIONERS seem to forget, the lessor is not at fault and is not the negligent cause of injury to PETITIONERS. PETITIONERS' interpretations only serve to punish the lessor, who played no role in causing their injuries.

Although PETITIONERS would have this Court conclude otherwise, absolutely no evidence has been presented that judgments against lessees are, in fact, uncollectible. There is no evidence of any kind which demonstrates that lessees of vehicles are the "insolvents" PETITIONERS would have this Court believe. Also, there is no evidence whatsoever that injuries in automobile accidents involving leased vehicles, are more serious than those with non-leased vehicles. Contrary to PETITIONERS' assertions, § 324.021(9)(b) does not single out the "most severely injured" persons.

Interestingly, it has taken the courts of this state fifty-eight years to establish the exact same exception for the lessor under the dangerous instrumentality doctrine that was in existence in 1931. In view of the lessor's long-standing immunity until the 1930's, PETITIONERS' arguments carry no weight.

CONCLUSION

Based on the foregoing reasoning and authorities, the decision of the Third District Court of Appeal is eminently correct. It is respectfully submitted that the decision of the Third District Court of Appeal must be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE CERTIFY that a true copy of the foregoing was mailed, this 31st day of July, 1990, to all counsel on the attached mailing list.

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