SUPREME COURT OF FLORIDA

FRANK ROCA, as Personal Representative of the Estate of Frank J. Roca, Jr., Deceased,

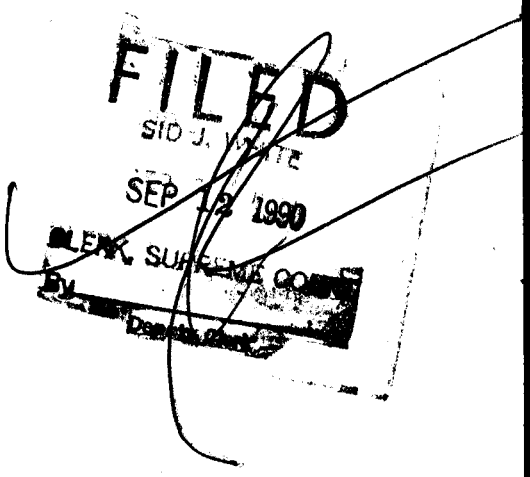
Petitioner,

vs.

VOLKSWAGEN CREDIT, INC., a foreign corporation,

Respondent.
_____/

CASE NO. 76,074



BRIEF OF AMICUS CURIAE
FLORIDA AUTOMOBILE DEALERS ASSOCIATION

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TABLE OF CONTENTS

TABLE OF CASES AND CITATIONS

Statutes and Other Authorities:

Introduction

Amicus Curiae, Florida Automobile Dealers Association [FADA], is an association composed of approximately 800 franchised dealers of new cars in Florida. FADA, though its membership, is familiar with the customs and business practices of the automobile industry, including the commercial, long-term leasing of new cars as a financing alternative which is often preferred by customers to the purchase and outright ownership of cars.

Amicus submits this Brief in support of the position of Respondent, Volkswagen Credit, Inc. The Respondent was a long-term lessor found exempted from dangerous instrumentality vicarious liability based in part on Section 324.021(9)(b), Florida Statutes (Supp. 1986).

Statement of the Case and Facts

Amicus adopts the Statement of the Case and Facts submitted by Respondent, Volkswagen Credit, Inc. Amicus also notes that the statutory exemption from vicarious liability provided in Section 324.021(9)(b), Florida Statutes, applies so long as 1) minimum insurance requirements are satisfied and 2) the lease is for a term of one year or longer. Both of these prerequisites were unquestionably met in this case, since the required insurance was in place and the lease term was for five (5) years. There are no additional requirements under Section 324.021(9)(b).

Summary of Argument

Legislative history and common sense dictate that Section 324.021(9)(b) is intended to modify Florida's dangerous instrumentality doctrine by eliminating liability for long-term lessors who require their lessees to obtain adequate insurance coverage. Moreover, the statutory language evinces an effort to modify the lessor's liability for actions of the operator of a leased vehicle.

This statute is constitutional. Access to courts is not implicated because the dangerous instrumentality doctrine post-dated Florida's adoption of English common law. Further, this doctrine as applied to vehicles did not exist in Florida until 1920 when it was judicially adopted, long after common law was generally adopted in Florida. Also, the statute merely modifies the doctrine to be consistent with inherent limitations which arise when dominion and control of a vehicle are transferred to a beneficial owner. Consistent with equal protection requirements, the statute creates reasonable categories. These categories are especially reasonable since long-term leases, unlike short-term leases, involve the transfer of a significant degree of dominion and control associated with beneficial ownership of a vehicle. Finally, the statute reasonably relates to the legislative goal of reducing the overall costs of liability insurance to the consumer who leases vehicles for a long-term.

ARGUMENT

I.

Section 324.021(9)(b) Was Intended To Modify Liability Imposed Under Florida's Dangerous Instrumentality Doctrine.

Petitioner's primary argument is that Section 324.021(9)(b) is not intended to limit Florida's dangerous instrumentality law, but rather to address only the insurance requirements of long-term lessors.[1] In effect, Petitioner asserts that the statutory changes effected by the law no longer require the lessor to be financially responsible under the provisions of Chapter 324, but that instead Florida law inconsistently retains the lessor's financial liability.

The most compelling evidence against such a position is the legislative history of the floor debate in the House of Representatives, which was presented to the trial court. See Folmar v. Young, 560 So.2d 798, 800-01 (Fla. 4th DCA 1990). On June 6, 1986, when Senate Bill 902 was debated, both proponents and opponents clearly understood that the amendments offered to that Bill (which became Section 324.021(9)(b)) had the effect of abrogating the dangerous instrumentality doctrine for long-term lessors. See Fla. H.R.Jour. 1066-67 (Reg. Sess. June 6, 1986).

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[1] Amicus will not directly address Petitioner's initial argument (Point I) concerning whether the lessor was truly the beneficial owner in this case, as required by Palmer v. R.S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955). Instead, Amicus incorporates by reference its Brief in Raynor v. Equilease Corp., Case No. 75,870, which is now before this Court and which already addresses this issue.

This doctrine imposes vicarious liability on the owners of vehicles for the negligent operation of third parties who are entrusted with the vehicles.[2]

One of the Bill's opponents, Representative Dudley, stated during the floor debate that the purpose of the amendment was to alter the dangerous instrumentality doctrine:

> I think what we are being asked to do here on this amendment is to change the law of Florida as it relates to the liability of the owner of an automobile. . . . [T]he owner of an automobile is financially responsible for any damages caused when that car is involved in an accident . . . As I understand the amendment as it's been explained on the House Floor, it would say that the lessor of the automobile, the owner who is allowing someone else to use it would be avoiding that liability.

Folmar, 560 So.2d at 800. Representative Upchurch, speaking in support of the amendment, stated that the Bill was designed to treat, for purposes of liability, the long-term lease of an automobile the same as a sale:

> If you buy that Chevrolet or Ford or what have you, the dealer delivers that car and he has no more liability. But if he leases it to you for a long-term, he has liability. What this amendment will do, is treat the dealer the same whether he leased you the car for a long time or if he sells you the car.

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[2] Florida is one of the few states which imposes vicarious liability on the owner of a vehicle for an operator's actions, and has done so by judicial development of common law principles. See Note, The Dangerous Instrumentality Doctrine: Unique Automobile Law in Florida, 5 U.Fla. L.Rev. 412, 413 & n.6 (1952). The few other states which impose owner vicarious liability have typically done so by statute. See , e.g., Cal. Veh. Code §17150 (West 1971); D.C. Code Ann. §40-408 (1986); N.Y. Veh. & Traf. Law §388 (McKinney 1986).

Id. Indeed, much of the House floor debate focused on the merit of abrogating the dangerous instrumentality doctrine, demonstrating a legislative intent to address and alter this doctrine to reflect modern commercial practices involving long-term leasing of automobiles.

The premise of Petitioner's argument is that the definition of "owner" in the financial responsibility laws has no connection with the definition of "owner" for liability purposes under the dangerous instrumentality doctrine. This position is seriously undercut, however, by the Supreme Court's recognition that the dangerous instrumentality doctrine is directly connected to concepts of financial responsibility. Discussing the basis for the dangerous instrumentality doctrine, the Court stated:

> Responsibility under the law was accordingly attached to ownership of their instrumentalities, evinced first by registration laws and now by numerous provisions to assure financial responsibility of owners.

Susco Car Rental System v. Leonard, 112 So.2d 832, 837 (Fla. 1959) (emphasis added; footnote citing Chapter 324 omitted). Commentators also have recognized that one practical purpose of this doctrine is to ensure that a financially responsible defendant is available to sue. See note 2 supra. Thus, the concepts of financial responsibility and dangerous instrumentality liability are closely interwoven.

Further, the notion that, under the changes effected by Section 324.021(9)(b), a long-term lessor should still retain

liability under the dangerous instrumentality doctrine but no longer be required to satisfy financial responsibility provisions of Chapter 324 is nonsensical. Reasonable business practices would require long-term lessors to continue to purchase liability insurance to protect their businesses from serious losses arising from the negligence of their lessees. Thus, under Petitioner's analysis, the statute would accomplish nothing in practicality. Moreover, the statute's goal of reducing insurance costs to the consumer (as expressed by several Representatives in the House floor debate, see Folmar, 560 So.2d at 800-01) could not be achieved since both the lessor and lessee would still be forced by business necessity to purchase dual liability coverage. This fact has led the Fourth District to specifically reject Petitioner's argument. See Folmar.

Petitioner's interpretation of the statute also ignores the overall structure of Section 324.021(9), as well as cases from other jurisdictions interpreting similar provisions to exclude lessors from vicarious liability imposed on "owners" of automobiles. Section 324.021(9) contains two subparagraphs, each defining and exempting certain classes of "owners" from financial responsibility requirements, and concurrently from vicarious liability imposed under the dangerous instrumentality doctrine. Section 324.021(9), Florida Statutes (Supp. 1986), provides:

> (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 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.
>
> (b) Owner/lessor. -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; further, this subsection shall be applicable so long as the insurance required under such lease agreement remains in effect, shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith.

Subparagraph (a) limits the definition of "owner" to exempt or exclude owners who merely hold the bare legal title for purposes of a security interest, when the lessee or conditional purchaser has the right to purchase and right to possession. This limitation is entirely consistent with the Supreme Court's holding in Palmer v. Evans, 81 So.2d 635 (Fla. 1935), which determined that even though a seller retained legal title to an automobile under a conditional sales contract, because beneficial ownership had transferred to the buyer, the seller was not liable under the dangerous instrumentality doctrine. Accord Cox Motor Co. v. Faber, 113 So.2d 771 (Fla. 1st DCA 1959).

Consistent with Palmer, several other jurisdictions have

construed statutory provisions nearly identical to Section 324.021(9)(a) to exempt certain lessors from dangerous instrumentality liability. In Moore v. Ford Motor Credit Co., 166 Mich. App. 100, 420 N.W.2d 577 (1988) (App. A), the court held that, under a conditional lease which allowed the lessee to purchase the automobile, the lessor was not the owner for purposes of imposing owner vicarious liability.[3] In Lee v. Ford Motor Co., 595 F.Supp. 1114 (D.D.C. 1984) (App. B), the federal court held that because Ford had leased a car under a long-term lease, it lacked "dominion and control" over the car for purposes of a statutory provision imposing vicarious liability on owners. The court reached this conclusion despite the lack of a specific statutory exclusion for long-term lessors. The court noted that one of the purposes of owner vicarious liability is to place liability on the person in a position to prevent use of the vehicle. Id. at 1116. Since a significant degree of dominion and control was conveyed to the long-term lessee, the purposes of the owner vicarious liability statute would not be furthered by holding Ford liable. These cases demonstrate that the definitions in both Section 324.021(a) and (b) are specific exemptions to vicarious liability otherwise imposed on the owner of the vehicles.

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[3] See also Klein v. Leatherman, 270 Cal.App.2d 792, 76 Cal.Rptr. 190 (Cal. 1st Dist. Ct. App. 1969) (lessor under lease containing option to purchase for nominal consideration was not liable under statute imposing owner vicarious liability).

Petitioner's argument that Section 324.021(9)(b) only addresses insurance requirements and does not modify the liability of a long-term lessor also ignores the explicit statutory language which directly addresses the issue of such liability:

> Notwithstanding any . . . existing case law, the lessor . . . shall not be deemed the owner of said motor vehicle . . . for the acts of the operator in connection therewith; . . .

§ 324.021(9)(b), Fla. Stat. (emphasis added). Thus, this law by stating that a long-term lessor will not be deemed an owner under Florida's case law for actions of the operator of the leased vehicle, directly modifies the dangerous instrumentality doctrine. Because this is an overt legislative expression of the statute's purpose in limiting the vicarious liability of long-term lessors, it cannot simply be ignored. The Legislature, of course, is empowered to modify, within constitutional limitations, this doctrine which has been judicially developed in Florida. See generally Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987) (upholding the Legislature's general abrogation of the doctrine of joint and several liability).

Based on these arguments and the legislative history of Section 324.021(9)(b), there can be little question about what the Legislature intended by enacting this new provision to facilitate vehicle lease transactions. The Legislature certainly intended to abrogate vicarious liability imposed under the dangerous instrumentality doctrine. Accordingly, the provision

protects Volkswagen Credit from vicarious liability since adequate insurance was in place.

II.

Section 324.021(9)(b) is Constitutional As It Satisfies Access to Courts, Equal Protection and Due Process Requirements.

Petitioner next argues that if the statute does exempt Volkswagen Credit from the dangerous instrumentality doctrine, it is unconstitutional as denying access to courts, denying equal protection of the laws, and denying substantive due process. Statutes are presumed to be constitutional, and all doubts as to validity must be resolved in favor of constitutionality. The party attacking a statute must demonstrate beyond a reasonable doubt that the statute is unconstitutional. See State v. Ocean Highway & Port Authority, 217 So.2d 103 (Fla. 1968). Petitioner has failed to carry this heavy burden.

a.

Access To Courts

Petitioner mistakenly presumes that Article I, Section 21, Florida Constitution, is implicated in assessing the constitutionality of Section 324.021(9)(b). However, this constitutional provision has no application to this case for several reasons.

First, under Kluger v. White, 281 So.2d 1 (Fla. 1973), the right of access to courts attaches only when redress has been provided either 1) by statutes predating the Declaration of Rights, or 2) by a right which became part of the common law pursuant to Section 2.01, Florida Statutes, adopting the English

common law in effect through July 4, 1776:

> We hold, therefore, that where 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.

Since no statutory right is involved in this case as Florida has no statute codifying the dangerous instrumentality doctrine for automobiles, only the second prong of Kluger, dealing with a 1776 English common law right, can apply. However, commentators have traced the origins of the general dangerous instrumentality doctrine to Fletcher v. Rylands, L.R. 1 Ex. 265 (1866), aff'd, L.R. 3 H.L. Cas. 330 (1868). See Note, The Dangerous Instrumentality Doctrine: Unique Automobile Law In Florida, supra note 2 at 413 n. 7. This development occurred nearly a century after the date which limits the common law adopted in Florida. Because this general doctrine was not part of English common law prior to 1776, it could not have been adopted for purposes of the protections of Article I, Section 21.

Second, Florida initially applied the doctrine of dangerous instrumentality to automobiles in 1920 by judicial development.

See Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (1920). Prior to that date, Florida had no doctrine of dangerous instrumentality which applied to automobiles. Indeed, no state has such a doctrine which is based on English common law since this right did not exist in that body of law. The few other states which impose vicarious liability on the owner of vehicles have done so by specific statutory enactment. See, e.g., Cal. Veh. Code § 17150 (West 1971); D.C. Code Ann. § 40-408 (1986).

Thus, this doctrine as applied to vehicles has only arisen by judicial pronouncement or by statute. Without these post-1776 rulings and statutes, there is no right to recover from the owner of the vehicle for the operator's negligence. The English common law clearly did not contain this right since the states which have also adopted the common-law have no such right of recovery absent subsequent ruling or statute. Because this right to recover did not exist in 1776, it is not protected by Article I, Section 21.

Moreover, even if Article I, Section 21 does apply to this case, Section 324.021(9)(b) does not abolish the dangerous instrumentality doctrine for vehicles. Rather, the statute is a consistent development of that doctrine which recognizes that when dominion and control of the vehicle are relinquished, bare legal title should not result in imposition of owner liability. This statute merely recognizes the commercial reality that long-term leasing is a marketplace alternative used in acquiring

virtually complete dominion, control, and use of cars. The statute bursts the fiction that a long-term lessor retains any real dominion over the automobile, which has effectively been purchased by the lessee using the lease as a financing device. See Perry v. G.M.A.C. Leasing Corp., 549 So.2d 680 (Fla. 2d DCA 1989), rev. denied, 558 So.2d 18 (1990) (rejecting this same argument that Section 324.021(9)(b) denies access to courts). Consistent with Palmer, in which bare legal title under a conditional sales agreement would not support owner liability, this statute also defines other appropriate situations which are outside the doctrine of dangerous instrumentality.[4]

Section 324.021(a) appropriately recognizes certain limitations inherent in the dangerous instrumentality doctrine and certainly is not a violation of Article I, Section 21. Because Section 324.021(9)(b) likewise merely modifies the law to recognize inherent limitations in the doctrine of dangerous instrumentality which arise under long-term leases, no abolition of the doctrine or rights thereunder has occurred.

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[4] The statute is also crafted to ensure the exemption only applies when a minimum of $100/300/50,000 insurance coverage is carried by the lessee, reducing the chances of an unsatisfied judgment. This effectively accomplishes one of the purposes of the dangerous instrumentality doctrine by ensuring a financially responsible defendant (an insurance company) is subject to suit. Kluger does not guarantee a plaintiff the right to sue a particular defendant of a minimum net worth.

b.

Equal Protection

The test applied under the equal protection clause is essentially the same as that applied for due process, except that the equal protection clause concerns legislative classifications. See United Yacht Brokers, Inc. v. Gillespie, 377 So.2d 668 (Fla. 1979). To comply with the requirements of equal protection, the statutory classification need only be rationally related to a legitimate state interest. See Eastern Airlines, Inc. v. Department of Revenue, 455 So.2d 311 (Fla. 1984).

One classification the statute does establish is long-term versus short-term leases. The differentiation between long-term leases, which are excluded from the dangerous instrumentality doctrine, and short-term leases, which are not, is reasonable within the statutory context. Long-term leases transfer to the lessee more of the muniments of ownership, including dominion and control, than do short-term leases.

In this regard, long-term leases may be compared to conditional sales agreements and security agreements. Courts have frequently recognized that a lessor may be little more than a secured party under a lease with an option to purchase. See, e.g., U.C. Leasing, Inc. v. Barnett Bank, 443 So.2d 384 (Fla. 1st DCA 1983) (lease containing option to purchase at FMV held to be a security device). Petitioner urges that its lease may not be

considered such a conditional sale and security agreement since it contains no option to purchase. However, leases which transfer several facets of ownership for a long period of time and require the lessee to purchase insurance have still been equated to security devices, even though lacking options to purchase. See, e.g., In re Tulsa Port Warehouse Co., 690 F.2d 809 (10th Cir. 1982) (several factors indicated ownership interest in lessee).

From these cases it can be seen that as dominion and control of the lessee increase, so does the beneficial ownership. Thus, in leases of one year or longer, significant aspects of beneficial ownership are typically transferred to the lessee. Because the dangerous instrumentality doctrine is intended to encourage the party with dominion and control of an automobile to prevent its negligent operation, it is reasonable to abrogate this doctrine for long-term leases when the lessor has transferred beneficial ownership to the lessee for a significant period of time. This is expressly approximate in this case which involves a very long-term lease for five (5) years. As the Supreme Court noted in Palmer, the rationale of imposing vicarious liability on the owner of an automobile for operation by another would not be served when the legal owner has effectively transferred "authority over the use of the vehicle" to another who is the beneficial owner for a substantial period of time. Palmer, 81 So.2d at 637.

For these reasons, the Legislature's choice of exempting long-term leases from the dangerous instrumentality doctrine has a rationale basis associated with the greater degree of control conveyed along with such leases.

c.

Substantive Due Process

For a statute to withstand constitutional scrutiny under principles of substantive due process, it need merely be rationally related to the achievement of a legitimate legislative purpose. See Department of Insurance v. Southeast Volusia Hospital District, 438 So.2d 815 (Fla. 1983).

The legislative history demonstrates that one purpose of the statute at issue in this case was to reduce the cost of insurance to the consumer who leased an automobile for a long term. Since both the lessor and lessee may in some cases have been held liable under prior case law, dual insurance coverage was often required, and the cost of this insurance was generally borne by the consumer who leased the vehicle:

> The leasing company must carry the liability insurance on every one of those cars, the individual who rents the car has to carry liability insurance for every one of those cars, and the bottom line is that the guy who leases the car is paying for all the insurance and he's paying for it double. . . . and so this will save you from paying for double insurance if you lease a car, same as you wouldn't have to purchase double insurance if you purchase a car.

Folmar, 560 So.2d at 801 (quoting Representative Upchurch in the

legislative history of Section 324.021(9)(b)).

By clearly eliminating vicarious liability of the long-term lessor who requires his lessee to purchase the requisite insurance, the statute rationally addresses its goal of reducing the public costs of insurance. The commercial lessor no longer is required by caution and business necessity to purchase insurance since the lessor is clearly no longer vicariously liable under the dangerous instrumentality doctrine, thus reducing the overall costs of insurance. The statute also reasonably ensures that an economically responsible party will be liable by requiring adequate insurance for the lessee, preserving an underlying goal of the dangerous instrumentality doctrine.

Conclusion

Amicus respectfully urges that the demonstrable intent of the Legislature in enacting Section 324.021(9)(b) was to further exempt long-term lessors from liability under the dangerous instrumentality doctrine when adequate financial responsibility was established in the lessee through the purchase of required insurance coverage. Further, logic dictates that the Legislature would hardly remove financial responsibility for long-term lessors without abrogating owner liability, since lessors would still be compelled to purchase insurance by business necessity. This would accomplish nothing. The language of the statute also displays an overt intent to alter owner liability for the operator's actions.

Moreover, the statute is constitutional in its exemption of long-term lessors from vicarious liability. Long-term leases transfer significant muniments of beneficial ownership to lessees, who obtain effective dominion and control over the leased vehicles. Exempting long-term lessors from vicarious liability is therefore rational, and is reasonably intended to effectuate an overall savings in insurance costs for the consuming public.

Therefore, Volkswagen should be held to be exempted from vicarious liability by Section 324.021(9)(b), and the statute should be held constitutional. Accordingly, the decision of the district court should be affirmed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express Mail to JANIS BRUSTARES KEYSER, Reid, Ricca & Rigell, P.A., 500 Austrailian Avenue South, Clearlake Plaza, 9th Floor, P.O. Drawer 2926, West Palm Beach, FL 33402-2926 and G. BARTRAM BILLBROUGH, 2 S. Biscayne Boulevard, Suite 2500, Miami, Florida 33131, on this the 12th day of September, 1990.

Attorney