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Roth v. Old Republic Insurance Co., 269 So. 2d 3 (Fla. 1972)

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CASE COMMENTS

Insurance — INDEMNIFICATION — LESSEE'S PERMITTEE WHO WAS UNAUTHORIZED TO DRIVE VEHICLE UNDER LEASE CANNOT BE REQUIRED TO INDEMNIFY LESSOR FOR DAMAGES CAUSED BY PERMITTEE'S NEGLIGENCE. —*Roth v. Old Republic Insurance Co.*, 269 So. 2d 3 (Fla. 1972).

Ira Plax rented a car from Yellow Rent-A-Car. The rental contract provided that no one other than Plax could operate the car without Yellow's written consent. Plax, however, allowed Ronald Roth to operate the car without Yellow's consent. While driving the car Roth struck two pedestrians, killing one. The surviving victim and the decedent's administrator filed suits against Roth, Plax and Yellow Rent-A-Car. Roth's liability insurer, State Farm, provided funds for settlements but reserved the right to seek restitution from the other parties' insurers. The district court of appeal affirmed two summary judgments of the trial court. One granted Plax's insurer, North River, and Yellow's insurer, Old Republic, indemnity against Roth. The second judgment refused State Farm's claim for restitution from the other two insurers. The court of appeal concluded that a vehicle owner-lessor is entitled to indemnification from damages caused by the negligence of a lessee's permittee who was not authorized to drive the vehicle under the agreement between the owner and lessee.[1] The Florida Supreme Court reversed and remanded on the authority of *Susco Car Rental System v. Leonard*,[2] holding that it is a "necessary legal corollary" to the *Susco* decision that the owner is primarily liable for all damages caused by the permittee's negligence and that the permittee cannot be required to indemnify the owner under the terms of an agreement between the owner and lessee.[3]

The majority in *Roth* found the principles underlying *Roth* and *Susco* to be basically the same.[4] In *Susco* a lessee rented an automobile, agreeing not to let other persons drive the vehicle without the lessor's written consent. The lessee loaned the automobile to an unauthorized permittee, who negligently collided with another vehicle, causing injury. The Florida Supreme Court ruled that the lessor was liable to the injured party, saying that the contractual provisions against unauthorized permittees could not bar the rights of persons injured by the rented automobile, since the prohibition did not negate the fact

1. Roth v. Cannel, 242 So. 2d 491 (Fla. 3d Dist. Ct. App. 1970).
2. 112 So. 2d 832 (Fla. 1959).
3. 269 So. 2d at 6.
4. *Id.*

that the vehicle was put on the highway with the lessor's consent.[5] On the basis of *Susco* the court in *Roth* found that the unauthorized permittee had the implied consent of the lessor to use the automobile.[6]

In *Susco* the owner's implied consent was based on the theory that the automobile is a dangerous instrumentality.[7] The dangerous instrumentality doctrine abrogates the common law rule that a bailor is not liable for the torts of his bailee,[8] and renders the automobile owner vicariously liable for injuries caused by the negligence of one to whom he entrusts his automobile for use on the highways.[9] The owner is held to be vicariously liable so as to afford the public some measure of protection from the dangerous character of the automobile operated on the highway and to encourage the owner to be selective when permitting others to drive his automobile.[10] Although the rental car owner is vicariously liable to injured parties, Florida law generally permits the vicariously liable owner to recover indemnity from the negligent tortfeasor operator.[11] An exception to this rule arises where the driver has

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5. 112 So. 2d at 836.

6. 269 So. 2d at 6.

7. The dangerous instrumentality doctrine was set forth in Fletcher v. Rylands, 1 L.R. 265 (Ex. 1866), *aff'd*, 3 L.R. 330 (H.L. 1868). It serves as a means of finding an owner of a dangerous instrumentality liable for injuries caused by the instrumentality, without a demonstration that the owner was guilty of negligent conduct. In 1920, Florida applied this doctrine to the automobile, finding that an automobile operated on the highways was a dangerous instrumentality. Southern Cotton Oil Co. v. Anderson, 86 So. 629 (Fla. 1920). This doctrine has been repeatedly reaffirmed. *See* Lynch v. Walker, 31 So. 2d 268 (Fla. 1947); Boggs v. Butler, 176 So. 174 (Fla. 1937).

Florida is the only jurisdiction which has applied the dangerous instrumentality doctrine to automobiles. Note, *The Dangerous Instrumentality Doctrine: Unique Automobile Law in Florida*, 5 U. FLA. L. REV. 412, 413 (1952). Most states have held that an automobile is not a dangerous instrumentality, and that liability for the negligent operation of such a vehicle by one other than the owner cannot be predicated on mere ownership. *See, e.g.*, Gardiner v. Solomon, 75 So. 621 (Ala. 1917); Hunter v. First State Bank, 28 S.W.2d 712 (Ark. 1930); Slaughter v. Holsomback, 147 So. 318 (Miss. 1933); Vincent v. Crandall & Godley Co., 115 N.Y.S. 600 (1909); Terrett v. Wray, 105 S.W.2d 93 (Tenn. 1937).

8. *See* Note, *The Dangerous Instrumentality Doctrine: Unique Automobile Law in Florida*, 5 U. FLA. L. REV. 412 (1952). For a traditional view of the liability of the automobile owner, see, *e.g.*, Brown v. Chevrolet Motor Co., 179 P. 697 (Cal. Dist. Ct. App. 1919). The court there found a bailor of an automobile not liable for the injuries to a third person caused by his bailee, stating:

> The liability of an owner of an automobile for the negligence of its driver depends on the existence of the relation of principal and agent between the two. This relation does not result from the mere borrowing of such automobile. Hence it is uniformly held that the owner is not responsible for injuries resulting from the negligence of a driver whose only relation to the owner is that of borrower.

Id. at 698.

9. *See* Florida cases cited in note 7 *supra*.

10. *See* Southern Cotton Oil Co. v. Anderson, 86 So. 629 (Fla. 1920).

11. *See* Hertz Corp. v. Richards, 224 So. 2d 784 (Fla. 3d Dist. Ct. App. 1969); Finch-

paid the owner for insurance protection.[12] In *Roth,* the rental charge paid by lessee Plax to Yellow Rent-A-Car included the cost factor of owner's liability insurance.[13] Thus if Plax had been the tort-feasor, Yellow could not have recovered indemnity from him.[14]

While the lessor would generally not have a cause of action for indemnity against a lessee tort-feasor when the lessee had paid for liability insurance, a lessor would seem to have an action for indemnity against a permittee tort-feasor, since the permittee would not have paid the lessor any premium for insurance, and the general rules of indemnity would apply. This occurred in *Hertz Corp. v. Richards;*[15] there the court granted the lessor Hertz indemnity from the permittee tort-feasor. Consequently, in the *Roth* decision, it would appear that if the lessor, Yellow Rent-A-Car, had been held vicariously liable to the injured parties due to the active negligence of the unauthorized permittee, the lessor would have been entitled to indemnity from Roth or his insurer.

In *Roth,* however, it was the tort-feasor's insurer, State Farm, who sought indemnity from the lessor after it had paid settlements to the injured parties. The district court of appeal denied indemnity to State

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ner Motor Sales, Inc. v. Lakin, 156 So. 2d 672 (Fla. 3d Dist. Ct. App. 1963); Hutchins v. Frank E. Campbell, Inc., 123 So. 2d 273 (Fla. 2d Dist. Ct. App. 1960).

This results from the generally accepted rules that one is responsible for the consequences of his own negligence and that one held liable for the negligence of another has a right of indemnity from that person. *See, e.g.,* Pacific Nat'l Ins. Co. v. Transport Ins. Co., 341 F.2d 514 (8th Cir. 1965) (applying Arkansas law); Kramer v. Morgan, 85 F.2d 96 (2d Cir. 1936) (dictum); Dale v. Whiteman, 202 N.W.2d 797 (Mich. 1972); Lunderberg v. Bierman, 63 N.W.2d 355 (Minn. 1954); Traub v. Dinzler, 131 N.E.2d 564 (N.Y. 1955); Millard v. Baker, 81 N.W.2d 892 (S.D. 1957).

12. *See* Morse Auto Rentals, Inc. v. Lewis, 161 So. 2d 235 (Fla. 3d Dist. Ct. App. 1964). In the *Morse* decision the court left open the possibility of a different result if the judgment exceeded the coverage provided under the agreement. The owner was held entitled to indemnification from lessee for monies paid in excess of coverage provided in the lease agreement in Hertz Corp. v. Ralph M. Parsons Co., 292 F. Supp. 108 (M.D. Fla. 1968), *rev'd on other grounds,* 419 F.2d 783 (5th Cir. 1969).

13. 242 So. 2d at 492-93. The court of appeal apparently considered it immaterial whether the fee for the insurance or even mention of liability insurance is set out in the rental agreement so long as the rental cost in fact includes the insurance.

14. *See* Bordettsky v. Hertz Corp., 171 So. 2d 174 (Fla. 2d Dist. Ct. App. 1965); Morse Auto Rentals, Inc. v. Lewis, 161 So. 2d 235 (Fla. 3d Dist. Ct. App. 1964).

15. 224 So. 2d 784 (Fla. 3d Dist. Ct. App. 1969). In *Hertz* the lessee rented an automobile, agreeing not to allow other persons to drive it. Such persons were also specifically excluded from protection under the owner's automobile liability policy. The lessee permitted another to drive the automobile, and the permittee negligently collided with another vehicle, causing injury. The injured party brought an action against the owner Hertz, and Hertz filed a third party indemnity action against the permittee. The trial court granted Hertz indemnity, and the district court affirmed.

Farm, relying on *Hertz* for the principle that it is the owner who is entitled to indemnification from the negligent permittee.[16]

In its decision the supreme court made no mention of the *Hertz* decision. Although both *Hertz* and *Roth* involved the question of whether the lessor-owner or the actual tort-feasor was to be held ultimately liable, there are factual distinctions between the two cases. In *Roth* the owner's policy was certified as proof of financial responsibility for the future.[17] In *Hertz* it is not clear whether the liability policy was so certified.[18] Thus the presence of an automobile liability policy certified under the Financial Responsibility Law[19] may be a crucial distinction between *Hertz* and *Roth*.[20]

Financial responsibility laws have been enacted by nearly every state.[21] The intent of the laws is to ensure that persons injured in auto-

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16. 242 So. 2d at 492.

17. 269 So. 2d at 6.

18. "In *Hertz* the liability policy was not certified as proof of its financial responsibility for the future. Or, if it was, this feature was never considered by the trial or appellate courts." Petitioner's Brief on the Merits at 14, Roth v. Old Republic Insurance Co., 269 So. 2d 3 (Fla. 1972).

19. FLA. STAT. ch. 324 (1971).

20. Another factual distinction between *Hertz* and *Roth* involves the agreement not to allow third persons to use the car without express permission from the lessor. The Hertz contract expressly provided that, with certain stated exceptions, the liability insurance did not apply when the vehicle was operated by someone other than the lessee. 224 So. 2d at 785. The Yellow Rent-A-Car lease agreement only prohibited use by "anyone other than the . . . renter without . . . express written consent." 242 So. 2d at 493. No mention of the consequences was made. The court apparently ignored this contractual difference. Had this been held to be a crucial distinction the only result would have been the subsequent insertion of language similar to that employed by Hertz in car rental agreements by other lessors.

21. The following states have financial responsibility laws: ALA. CODE tit. 36, §§ 74 (42)-(83) (1958), *as amended,* (Supp. 1971); ALASKA STAT. §§ 28.20.010-.640 (1970), *as amended,* (Supp. 1973); ARIZ. REV. STAT. ANN. §§ 28-1101 to -1225 (1956), *as amended,* (Supp. 1973); ARK. STAT. ANN. §§ 75-1401 to -1493 (1957), *as amended,* (Supp. 1971); CAL. VEHICLE CODE §§ 16000-560 (West 1971), *as amended,* (West Supp. 1973); COLO. REV. STAT. ANN. §§ 13-7-1 to -7-39 (1963), *as amended,* (Supp. 1969); CONN. GEN. STAT. ANN. §§ 14-112 to -142 (1970), *as amended,* (Supp. 1973); DEL. CODE ANN. tit. 21, §§ 2901-72 (1953), *as amended,* (Supp. 1972); D.C. CODE ANN. §§ 40-417 to -498c (1968), *as amended,* (Supp. 1970); FLA. STAT. §§ 324.011-.251 (1971), *as amended,* Fla Laws 1973, ch. 73-180, §§ 2, 5; GA. CODE ANN. §§ 92A-601 to -621 (1972), *as amended,* (Supp. 1972); HAWAII REV. STAT. §§ 287-1 to -48 (1968); IDAHO CODE §§ 49-1501 to -1540 (1967), *as amended,* (Supp. 1973); ILL. ANN. STAT. ch. 95½, §§ 7-100 to -503 (Smith-Hurd 1971), *as amended,* (Smith-Hurd Supp. 1973); IND. ANN. STAT. §§ 9-2-1-1 to -45 (1973); IOWA CODE. ANN. §§ 321A.1-.39 (1966), *as amended,* (Supp. 1972); KAN. STAT. ANN. §§ 8-722 to -769 (1964), *as amended,* (Supp. 1972); KY. REV. STAT. §§ 187.290-.990 (1971), *as amended,* (Supp. 1972); LA. REV. STAT. ANN. §§ 32:851 to :1043 (1963), *as amended,* (Supp. 1973); ME. REV. STAT. ANN. tit. 29, §§ 781-88 (1964), *as amended,* (Supp. 1972); MASS. GEN. LAWS ANN. ch. 90, § 3G (1969) (applies only to nonresident motorists); MICH. COMP.

mobile accidents receive compensation and to force irresponsible motorists off the highways.[22] There has been a strong indication that financial responsibility legislation was not intended to benefit the tortfeasor of an automobile accident.[23]

Financial responsibility laws are generally of two types: "proof"

LAWS ANN. §§ 257.501-.532 (1967, *as amended*, (Supp. 1973); MINN. STAT. ANN. §§ 170.21-.58 (1960), *as amended*, (Supp. 1973); MISS CODE ANN. §§ 63-15-1 to -75 (1972), *as amended*, (Supp. 1973); MO. ANN. STAT. §§ 303.010-.370 (1972), *as amended*, (Supp. 1972); MONT. REV. CODES ANN. §§ 53-418 to -458 (1961), *as amended*, (Supp. 1973); NEB. REV. STAT. §§ 60-501 to -569 (1968), *as amended*, (Supp. 1972); NEV. REV. STAT. §§ 485.010-.420 (1971); N.H. REV. STAT. ANN. ch. 268 (1966), *as amended*, (Supp. 1972); N.J. STAT. ANN. §§ 39:6-23 to -104 (1973); N.M. STAT. ANN. §§64.24-1 to -107 (1972); N.Y. VEH. & TRAF. LAWS §§ 330-368 (McKinney 1970), *as amended*. (McKinney Supp. 1973); N.C. GEN. STAT. §§ 20-279.1-.39 (1965), *as amended*, (Supp. 1971); N.D. CENT. CODE chs. 39-16, 39-16.1 (1972), *as amended*, (Supp. 1973); OHIO REV. CODE ANN. ch. 4509 (Page 1965), *as amended*, (Page Supp. 1972); OKLA. STAT. ANN. tit. 47, ch. 7 (1962), *as amended*, (Supp. 1972); ORE. REV. STAT. ch. 486 (1971); PA. STAT. ANN. tit. 75, §§ 1401-36 (1971), *as amended*, (Supp. 1973); R.I. GEN. LAWS ANN. §§ 31-31-1 to -22, 31-32-1 to -35 (1968), *as amended*, (Supp. 1972); S.C. CODE ANN. §§ 46-701 to -750.28 (1962), *as amended*, (Supp. 1972); S.D. COMPILED LAWS ANN. ch. 32-35 (1967), *as amended*, (Supp. 1973); TENN. CODE ANN. §§ 59-1201 to -1240 (1968), *as amended*, (Supp. 1973); TEX. REV. CIV. STAT. ANN. art. 6701h (1969), *as amended*, (Supp. 1972); UTAH CODE ANN. §§ 41-12-1 to -41 (1970), *as amended*, (Supp. 1973); VT. STAT. ANN. tit. 23, §§ 801-09 (1967); VA. CODE ANN. §§ 46.1-388 to -514 (1972), *as amended*, (Supp. 1973), WASH. REV. CODE ANN. ch. 46.29 (1970), *as amended*, (Supp. 1972); W. VA. CODE ANN. ch. 17D (1966), *as amended*, (Supp. 1973); WIS. STAT. ANN. ch. 344 (1971), *as amended*, (Supp. 1973); WYO. STAT. ANN. §§ 31-277 to -315 (1967), *as amended*, (Supp. 1973).

Additionally, several states have some form of compulsory automobile liability insurance. MD. ANN. CODE art. 66½, §§ 7-101 to -102 (Supp. 1973); MASS. GEN. LAWS ANN. ch. 90, §§ 34A-J (1969), *as amended*, §§ 34A-O (Supp. 1973), ch. 175, §§ 113A-M (1972), *as amended*, (Supp. 1972); N.J. STAT. ANN. §§ 39:6B-1 to -2 (1973); N.Y. VEH. & TRAF. LAWS §§ 310-321 (McKinney 1970), *as amended*, (McKinney Supp. 1973); N.C. GEN. STAT. §§ 20-309 to -319 (1965), *as amended*, (Supp. 1971).

Compulsory automobile insurance laws generally require a motor vehicle owner to have insurance or a substitute form of security at least equal in amount to the statutory minimum before his automobile can be registered. Under the Florida Automobile Reparations Reform Act, liability insurance became compulsory for every owner or registrant of a "motor vehicle" required to be licensed in the state. FLA. STAT. § 627.733 (1) (1971). The term "motor vehicle" is defined so as to limit the compulsory coverage to certain types of vehicles. *See* FLA. STAT. § 627.732 (1) (1971).

22. *See* R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 102-03 (1965); Braun, *The Financial Responsibility Law*, 3 LAW & CONTEMP. PROB. 505, 506 (1936); Grad, *Recent Developments in Automobile Accident Compensation*, 50 COLUM. L. REV. 300, 305 (1950); Note, *The Motor Vehicle Safety Responsibility Act*, 22 FLA. L.J. 17, 18 (1948); Comment, *The Principles of Financial Responsibility for Private Motor Vehicles*, 4 MIAMI L.Q. 502 (1950); Note, *Legislation—A Survey of Financial Responsibility Laws and Compensation of Traffic Victims: A Proposal for Reform*, 21 VAND. L. REV. 1050, 1051 (1968).

23. Comment, *The Principles of Financial Responsibility for Private Motor Vehicles*, 4 MIAMI L.Q. 502, 508 (1950). *See also* Reitz v. Mealey, 314 U.S. 33 (1941).

and "security" statutes.[24] The "proof" statutes were the first financial responsibility laws. They allow one uninsured accident, after which the owner is required to show proof of financial responsibility for the future. This "proof" can be met by securing an automobile liability insurance policy which provides the statutory amounts of protection. If proof of financial responsibility is not secured after the first accident, the driver's license and motor vehicle registration are revoked. "Proof" statutes, however, do not protect the first victim of a negligent driver. "Security" statutes were enacted to remedy this situation to some extent. The "security" statute does not make automobile liability insurance compulsory, but at the time of the first accident the owner must show proof of security sufficient to satisfy any judgment that might be rendered against him. Failure to do so will result in the loss of license and motor vehicle registration. The "security" requirement can also most easily be met by procuring automobile liability insurance prior to any accident.[25]

In Florida one way the "security" requirement may be met is by furnishing proof of a certified liability policy.[26] To qualify under the Financial Responsibility Law a liability policy must comply with certain statutory requirements, including requirements as to scope and amount of coverage. The policy must specify a particular vehicle and cover the owner and anyone operating that vehicle with either the express or implied permission of the owner.[27] Currently the amounts of liability coverage required are $10,000 for injury to one person, $20,000 for injury to two or more persons and $5,000 for property damage.[28] The certified policy may not contain provisions which lessen or are contrary to the coverage required by the law.[29] If a certified policy contains such provisions, they will be voided, and the insurer will be required to provide the statutory coverage.[30]

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24. Grad, *Recent Developments in Automobile Accident Compensation*, 50 COLUM. L. REV. 300, 305 (1950). The following discussion of "proof" and "security" statutes is based largely upon Grad's discussion, *id.* at 305-11.

25. Florida's present financial responsibility law is a "proof" and "security" statute as are those of many other states. R. KEETON & J. O'CONNELL, *supra* note 22, App. C.

26. FLA. STAT. § 324.031 (1) (1971). Financial responsibility can also be proved by posting a surety bond, by furnishing a certification of a deposit of cash or securities, or by furnishing a certificate of self-insurance. FLA. STAT. §§ 324.031 (2)-(4) (1971).

27. FLA. STAT. § 324.151 (1) (a) (1971).

28. FLA. STAT. § 324.021 (7) (1971). The required amounts of coverage for personal injury will be increased to $15,000 and $30,000 on July 1, 1975. FLA. LAWS 1973, ch. 73-180, §§ 2, 5.

29 *See* Bankers & Shippers Ins. Co. v. Phoenix Assurance Co., 210 So. 2d 715 (Fla. 1968).

30. Makris v. State Farm Mut. Auto. Ins. Co., 267 So. 2d 105 (Fla. 3d Dist. Ct. App. 1972).

Yellow's liability policy, by virtue of certification as proof of financial responsibility for the future, was required to "insure the owner named therein and any other person as operator using such motor vehicle . . . with the express or implied permission of such owner . . . ."[31] Since permittee Roth had the owner's implied consent, he came within the "any other person as operator" protection. The prohibition against unauthorized permittees in the Yellow Rent-A-Car rental agreement was then voided as contrary to the financial responsibility protection afforded to Roth and injured members of the public.[32] Consequently, Yellow's insurer was found liable for the settlements to the plaintiffs by application of the provisions of the Financial Responsibility Law.

After finding the lessor's insurer initially liable, the court failed to recognize the lessor's common law right of indemnity.[33] Although the owner-lessor is vicariously liable to those who are injured by his automobile, previously he was generally allowed to seek indemnity from the tort-feasor to whom he entrusted his automobile.[34] The *Roth* decision precludes the owner from a recovery from the permittee tort-feasor.

The court's decision grants the insurer of an active tort-feasor indemnity from the insurer of a vicariously liable owner. In so doing, it is clearly contrary to the idea that protection afforded by financial responsibility legislation is intended to benefit injured parties, not tort-feasors.[35] Nothing in Florida's Financial Responsibility Law suggests that it was enacted to protect tort-feasors or their insurers. Furthermore, the court's decision appears to be directly contrary to rulings in other jurisdictions where indemnity from a tort-feasor has been granted to an owner, even where the owner was initially held liable under the provisions of the state's financial responsibility law.[36]

Contrary to the court's implication, the *Roth* decision does not im-

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31. FLA. STAT. § 324.151(1)(a) (1971).
32. 269 So. 2d at 6-7.
33. *Id.* at 6; *see* note 11 *supra.*
34. *See* note 11 *supra.*
35. *See* note 23 *supra.*
36. *See, e.g.,* Lunderberg v. Bierman, 63 N.W.2d 355, 360 (Minn. 1954):

> [W]here the owner of an automobile has become liable to a third person injured by one to whom the owner has granted permission to drive his car solely by virtue of the Financial Responsibility Act, such owner is entitled to recover indemnity from the operator of the car in the absence of any active negligence chargeable to the owner.

See Kramer v. Morgan, 85 F.2d 96 (2d Cir. 1936) (dictum); Dale v. Whiteman, 202 N.W.2d 797 (Mich. 1972); Traub v. Dinzler, 131 N.E.2d 564 (N.Y. 1955); Millard v. Baker, 81 N.W.2d 892 (S.D. 1957).

prove the injured party's chances of receiving compensation.[37] Had the court refused to grant State Farm indemnity, plaintiffs would still have been able to collect from the vicariously liable owner. The decision does serve to benefit the unauthorized permittee tort-feasor and his insurer. It frees him and his insurer from the cost of his negligence, and puts the cost on the rental agency and ultimately the public. The result is an extension of *Susco* that is unnecessary to carry out the initial purpose of financial responsibility legislation—compensating injured victims and making highway travel more safe.

Torts—Impact Rule—Damages Are Recoverable for Physical Consequences of Emotional Distress Regardless of Whether Injured Party Suffered Physical Impact in the Commission of the Tort.— *Stewart v. Gilliam,* 271 So. 2d 466 (Fla. 4th Dist. Ct. App. 1972) *rev'd,* No. 43,363 (Fla., Jan. 10, 1974).

Two cars driven by the defendants collided. The car driven by defendant Bradley then struck the Stewart home, and the defendant Gilliam's car struck a tree in the Stewart yard. Mrs. Stewart, who was in her house when the Bradley car struck it, ran outside to see if anyone was hurt. Soon after returning to the house, she felt chest pains. Two hours later she was placed in the intensive care unit of a nearby hos-

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37. The court contended that its ruling would in the long run make recovery easier for injured third parties:

> Often such permittees of rental car lessees temporarily driving rental cars would not be as fortunate as Roth and have the protection of their own personal auto liability insurance coverage, rendering it even more difficult for injured members of the public to recover their losses arising from the negligence of drivers of rental cars.

269 So. 2d at 7.

This reasoning fails because the fact that a permittee tort-feasor might "not be as fortunate as Roth and have the protection of . . . liability insurance coverage" is irrelevant in terms of protecting the public. Protection of injured members of the public requires only that *some* source of recovery be made available; Florida law has provided that that source will be the vicariously liable owner. Once that primary source of recovery has been supplied, different concerns should govern determination of which insurance company shall ultimately bear the cost. This was recognized by Justice Dekle in his dissenting opinion:

> Of course there is liability [on the part of the lessor] to the injured party and no rental contract agreement can prevent it. With that there is complete accord. Here, however, that question has been settled and the respective insurance companies are litigating indemnification. . . .

Id.