

Florida High Court Tapped Brakes on Dangerous Instrumentality Liability

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Floridians concerned about liability when sharing their automobiles with children or friends can relax a bit after the Florida Supreme Court's recent ruling on the state's long-standing dangerous instrumentality doctrine. Its decision in *Emerson v. Lambert*, SC 2020-1311 (Fla. Nov. 16, 2023), once again limits the doctrine.

Essentially, the doctrine was created to place financial responsibility on individuals who entrust the use of "dangerous instrumentalities" (i.e., automobiles) to others. In the real world, the doctrine often arises in cases where commercial companies allow their employees to use company vehicles and an accident occurs while the employee is "entrusted" with the vehicle. Courts have applied the doctrine in a myriad of other contexts in which another individual is operating a vehicle entrusted to him/her by the vehicle's owner.

While the application of the doctrine is rather wide-reaching, various court decisions through the years have limited its application. For example, liability has been capped for short-term lessors and owners who are natural persons, as opposed to business entities. The doctrine has also eliminated vicarious liability for long-term automobile lessors and prohibits the im-

sition of vicarious liability on car rental companies.

In *Emerson*, a 21-year-old boy, was driving home when he hit a motorcyclist, causing life-altering injuries. The motorcyclist sued the boy and brought vicarious liability claims against his parents for his negligent use of the family vehicle. The motorcyclist claimed the boy's father was vicariously liable as the vehicle's titleholder, while his mother was vicariously liable as the bailee who allowed their son to drive the vehicle.

The jury found in favor of the motorcyclist and concluded the mother was a bailee who consented to her son's use of the vehicle. After considering fault apportionment, amongst other factors, the jury's verdict resulted in a net judgment of more than \$18 million. The court reduced the father's responsibility to \$600,000, based on the statutory maximum allowed by Florida law for vehicle owners, but it still entered a final judgment against the son and mother for the full amount of the verdict.

On appeal, the Florida Supreme Court tackled the question of whether one family member who is a bailee of a car can be held vicariously liable when the vehicle's acknowledged, titled owner is another family member who is also vicariously liable

under the doctrine. The court found that the vehicle's owner (the father) is vicariously liable to the motorcyclist for his injuries by statute and common law. However, in sharing his vehicle with his family members (the mother and son), the vehicle's owner did not increase the number of people liable to the motorcyclist, and therefore, did not increase the amount of potential recovery under the doctrine.

The court acknowledged that in enacting the statutory maximum allowed for vehicle owners, the Florida Legislature had laid out protections for the vehicle owners as they are generally not directly at fault for causing the injury. Allowing the mother to hold any responsibility for the motorcyclist's injuries would ultimately result in a way for plaintiffs and their attorneys to get around the statutory maximum for vehicle titleholders when the vehicle is shared amongst the family. Thus, the court answered the question in the negative.

This is a decision that will likely have implications for other scenarios.

Consider this hypothetical situation where a family owns several vehicles registered under the parents' names. Two of these cars were acquired for the children, John and Jane. Let's imagine John's car breaks down, prompting him to request the use of Jane's vehicle from her. Jane gives permission to John to borrow the vehicle her parents let her use. With her consent, John drives her vehicle, still bearing the parents' names on the title. Unfortunately, John ends up in a car accident. In this case, under *Emerson*, Jane can potentially find protection from vicarious liability under the dangerous instrumentality doctrine, as long as the parents can be held vicariously liable as the

title owners who have not expressly objected to permissive use. This situation also protects an insurer from being responsible for the damages assessed against multiple insureds, especially for Jane, who would not fall under the vicarious liability cap for natural persons.

Expanding on the previous hypothetical, let's envision a scenario where John approaches Jane to borrow the car that remains titled to the parents. Rather than driving the vehicle himself, John's girlfriend gets behind the wheel and gets into an accident.

With the slight change of facts, *Emerson* could potentially apply in different ways depending on specific circumstances. When considering the application of *Emerson* in this context, several questions arise.

Since John's girlfriend is outside the immediate family unit, one must assess if permissive use extended to her. What would happen if the parents' consent to the children did not extend to the girlfriend? What if the parents did not give specific consent but no one contests the permissive use? Moreover, does this situation fall under the concept of bailment? Lastly, would *Emerson* provide protection to Jane and John in this specific scenario?

Let's change the hypothetical to a divorced couple with a driving-age child. In the process of separating, the husband left the vehicle with the former wife without formally removing his name from the title. The vehicle was solely titled in his name. The former wife regularly uses the vehicle for her daily activities. Subsequently, the wife permits the son to borrow the vehicle to go to a friend's house. As in our other scenari-

os, the son gets in a motor vehicle accident. Under this hypothetical, in the event the husband declines permissive use of the vehicle, Emerson may not provide legal protection. In this situation, the court may also have to analyze an additional element of permissive use.

In sum, situations like the hypotheticals above are bound to arise due to the complex nature of familial relationships, shared property, and legal implications of such. Thankfully, the Florida Supreme Court stopped what would likely have been very artful pleadings by plaintiff's attorneys any time a vehicle was shared amongst several

individuals. Questions surrounding permissive use, consent from title owners, and bailment, will all have to be analyzed to see whether potential protection will be offered from Emerson.



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