

# MARKS & WEINBERG, P.C.

## **Amba-An v. Arias-Turecious** 704 So. 2d 1093 (Fla. Ct. App. 1997)

Under Florida's dangerous instrumentality doctrine, a true lessor of a motor vehicle can be held strictly liable for the negligent operation of the vehicle by the lessee. There is a statutory exemption which protects true lessors from the dangerous instrumentality doctrine if liability insurance is in place. Lessors who have entered into a conditional sales contract with a lessee (instead of a true lease) are not subject to the dangerous instrumentality doctrine.

Plaintiff in this case was injured in an automobile accident and brought a personal injury action against the driver of the other vehicle (Bernardo Arias-Turecious), the lessee of the vehicle (ACM Equipment & Landscaping, Inc.) and the lessor of the vehicle (LTI Vehicle Leasing Corporation). The lease contained a one-dollar purchase option and, although the lessee was required to maintain liability insurance, the lessee breached its obligations and no such insurance was in effect.

The District Court of Appeals held, as a matter of law and despite the nominal purchase option, that the lease was a "true-lease" and that the lessor could be held liable under Florida's dangerous instrumentality doctrine. In support of its findings, the court noted that the agreement was entitled "Commercial Vehicle Lease Agreement" and that the lessor retained title to the truck. Additional facts leading to the court's conclusion



included the fact that: (1) interest was not specifically mentioned in connection with monthly payments; (2) the lessee could not assign its interest in the lease without the lessor's written permission, but the lessor could assign its interest at will; (3) the lease required the lessee to carry liability insurance in the amount required by statute to exempt the lessor from financial responsibility; (4) the lessee was required to display signs, if asked, indicating that the lessor owned the truck; and (5) the lessee was required to return the truck in good operating condition.

Many of those familiar with the leasing industry consider this case to be an extremely poor decision. Fortunately, it has not subsequently been cited by other courts. Unfortunately, it has not been explicitly overruled and is technically applicable law in the state of Florida. Regardless, the case serves as a strong warning to equipment lessors that there are still plenty of judges who are not familiar with the leasing industry and this unfamiliarity can lead to unfortunate results.

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit [leaselawyer.com](http://leaselawyer.com) or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

