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Strict Liability Is Imposed upon Supplier of Chattel under Lease.

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Mitchell. The majority expressly sought only to "distinguish" *Mitchell* from *Fuentes*, and if they intended to overrule *Fuentes* by implication, they may have defeated their purpose. Courts all over the country have accepted the *Fuentes* doctrine and policy.[64] One author stated, "Nineteen sixty-nine was a momentous year. In that year the United States put a man on the moon, and in that year the creditor met the constitution."[65] Since *Fuentes* was not explicitly overruled, it is doubtful the lower courts will let the creditor *forget* the constitution, unless a step backward is taken in the area of consumer rights.

James I. Calk

TORTS—Products Liability—Strict Liability Is Imposed Upon Supplier Of Chattel Under Lease

Rourke v. Garza, 511 S.W.2d 331
(Tex. Civ. App. — Houston [Ist Dist.] 1974, no writ).

Plaintiff Adolph O. Garza, a pipefitter, fell from scaffolding not equipped with standard safety cleats. He sought recovery under the theory of strict liability from J.E. Rourke Rental and Supplies, the lessor of the scaffolding. The jury found that the absence of safety cleats rendered the scaffolding defective, that defendant Rourke could reasonably have anticipated that the scaffolding would be used without the addition of safety cleats, and that the failure to have such devices was the producing cause of the fall. The trial court entered judgment in Garza's favor. On appeal, Rourke contended that there was no basis for liability because no negligence was found and that the doctrine of strict liability is inapplicable to the renting and leasing of equip-

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tional understandings that might justify . . . total disregard of stare decisis." Mitchell v. W.T. Grant Co., — U.S. —, —, 94 S. Ct. 1895, 1913, — L. Ed. 2d —, — (1974). It was also stated that:

> The only perceivable change that has occurred since the *Fuentes* case is in the makeup of this Court.
>
> A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve.

Id. at —, 94 S. Ct. at 1914, — L. Ed. 2d at —.

64. *See, e.g.*, Schneider v. Margossian, 349 F. Supp. 741 (D. Mass. 1972); Adams v. Egley, 338 F. Supp. 614 (S.D. Cal. 1972); Hall v. Stone, 189 S.E.2d 403 (Ga. 1972).

65. Clark & Landers, *Sniadach, Fuentes and Beyond: The Creditor Meets the Constitution*, 59 VA. L. REV. 355 (1973).

ment. Held—*Affirmed.* The doctrine of strict tort liability is applicable to a lessor of a defective product.[1]

Strict liability in tort, or liability without fault, is a means of recovery whereby the defendant can be held liable, even though he neither committed moral wrongdoing, nor departed from a reasonable standard of care.[2] The early law of torts recognized "fault" or moral responsibility as the basis of liability.[3] That doctrine was gradually eroded,[4] and in 1960 Professor Prosser introduced the theory of strict tort liability of a seller of defective products to injured users or consumers.[5] In 1963 the California Supreme Court first applied the doctrine to manufacturers,[6] and since that time over two-thirds of the states have adopted strict liability in products liability actions against manufacturers, wholesalers, and retailers.[7] This judicial trend was emphasized in 1965 when the American Law Institute included the theory as Section 402A in the *Restatement (Second) of Torts* as a basis for liability for sellers of defective and unreasonably dangerous products.[8]

With most states already holding *sellers* strictly liable,[9] it was logical for courts to continue the expansion of the doctrine by extending strict liability to the next level in the marketing enterprise. In 1965, in *Cintrone v. Hertz*

1. Rourke v. Garza, 511 S.W.2d 331, 336 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ).

2. *E.g.*, Putnam v. Erie City Mfg. Co., 338 F.2d 911 (5th Cir. 1964) (containing an elaborate citation and review of Texas and American authorities); Fresno Air Serv. v. Wood, 43 Cal. Rptr. 276, 279 (1965).

3. *E.g.*, Worthington v. Mencer, 11 So. 72 (Ala. 1892); Michigan City v. Rudolph, 12 N.E.2d 970 (Ind. Ct. App. 1938); Ault v. Hall, 164 N.E. 518 (Ohio 1928). *See generally* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 75, at 492-93 (4th ed. 1971).

4. *E.g.*, Jaco v. Baker, 148 P.2d 938 (Ore. 1944). *See generally* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 75, at 494 (4th ed. 1971).

5. Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099, 1134 (1960).

6. Greenman v. Yuba Power Prods., Inc., 27 Cal. Rptr. 697 (1963) (plaintiff injured by defective combination power tool).

7. *E.g.*, Helene Curtis Indus. Inc. v. Pruitt, 385 F.2d 841 (5th Cir. 1967), *cert. denied*, 391 U.S. 913 (1968); *see* Putnam v. Erie City Mfg. Co., 338 F.2d 911 (5th Cir. 1964). *See generally* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 98, at 657-58 (4th ed. 1971).

8. RESTATEMENT (SECOND) OF TORTS § 402A (1965) provides:

Special Liability of Seller of Product for Physical Harm to User or Consumer

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and care of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

9. *See* Putnam v. Erie City Mfg. Co., 338 F.2d 911, 919-20 (5th Cir. 1964) (citing authority from various jurisdictions).

Truck Leasing & Rental Service,[10] the New Jersey Supreme Court held, in essence, that a commercial lessor should be subject to strict liability in tort for injuries resulting from the lease of a defective product.[11] Since then, California, Hawaii, Alaska, Illinois, and New Mexico have adopted the reasoning of the New Jersey court and have expressly held that strict liability in tort applies to the lessor of rental products as well as to the retail seller or manufacturer.[12] No distinction is generally made between the commercial lessor and the retailer or manufacturer because each places products in the stream of commerce knowing that they will be used without inspection for defects.[13]

The increased utilization of leasing as an alternative to buying and as a means of temporary convenience has made strict tort liability as relevant to the lease as to the sales transaction.[14] The risk of harm from a defective product is present in both lease and sale transactions,[15] and the lessee of the product has an equal need as well as an equal right of protection from an unreasonable risk of injury.[16] The lessee relies on the expertise of the lessor to provide a safe product just as a buyer so relies on a retailer.[17] Finally, the commercial lessor is in the best position to bear and distribute the loss resulting from injury caused by a defective product[18] in cases where he knows and controls the conditions of the product and can protect himself against loss through insurance.[19]

Courts considering the issue, then, have disclosed an unwillingness to distinguish between sellers and nonsellers, such as commercial lessors, for pur-

10. 212 A.2d 769 (N.J. 1965) (employee of the lessee of one of defendant's trucks injured as a result of brake failure).

11. *Id.* at 778-79; *accord*, Ettin v. Ava Truck Leasing, Inc., 251 A.2d 278, 285 (N.J. 1969).

12. Bachner v. Pearson, 479 P.2d 319 (Alaska 1970); Fakhoury v. Magner, 101 Cal. Rptr. 473 (1972); Price v. Shell Oil Co., 85 Cal. Rptr. 178 (1970); McClaflin v. Bayshore Rental Equip. Co., 79 Cal. Rptr. 337, 340 (1969); Stewart v. Budget Rent-a-Car Corp., 470 P.2d 240 (Hawaii 1970); Gallucio v. Hertz Corp., 274 N.E.2d 178 (Ill. 1971); Stang v. Hertz Corp., 497 P.2d 732 (N.M. 1972).

13. Bachner v. Pearson, 479 P.2d 319, 328 (Alaska 1970); *accord*, Price v. Shell Oil Co., 85 Cal. Rptr. 178, 181 (1970); McClaflin v. Bayshore Rental Equip. Co., 79 Cal. Rptr. 337 (1969); Gallucio v. Hertz Corp., 274 N.E.2d 178 (Ill. 1971); *see* Stewart v. Budget Rent-a-Car Corp., 470 P.2d 240 (Hawaii 1970); Stang v. Hertz Corp., 479 P.2d 732 (N.M. 1972).

14. Price v. Shell Oil Co., 85 Cal. Rptr. 178, 182 (1970); *see* Bachner v. Pearson, 479 P.2d 319 (Alaska 1970); Fakhoury v. Magner, 101 Cal. Rptr. 473 (1972); McClaflin v. Bayshore Equip. Rental Co., 79 Cal. Rptr. 337 (1969); Stewart v. Budget Rent-a-Car Corp., 470 P.2d 240 (Hawaii 1970); Gallucio v. Hertz Corp., 274 N.E.2d 178 (Ill. 1971); Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769 (N.J. 1965); Stang v. Hertz Corp., 497 P.2d 732 (N.M. 1972).

15. *E.g.*, Price v. Shell Oil Co., 85 Cal. Rptr. 178, 181-82 (1970).

16. *E.g.*, Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769, 778 (N.J. 1965).

17. *Id.* at 778.

18. *E.g.*, Bachner v. Pearson, 479 P.2d 319, 327 (Alaska 1970).

19. *Id.* at 328; *see* Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769, 778 (N.J. 1965).

poses of strict liability.[20] The plaintiff lessee, nonetheless, must complete a three-step burden of proof before imposing strict liability on a commercial lessor. If the plaintiff can establish: (1) that the lessor is engaged in the business of leasing,[21] (2) that he leased a defective product unreasonably dangerous to the user or consumer which caused injury to the user or consumer,[22] and (3) that the product leased was expected to and did reach the user or consumer without substantial change in its condition after lease, then strict liability will be imposed on the lessor.[23]

Darryl v. Ford Motor Co.[24] enunciated the now well-settled Texas rule that a manufacturer who places a defective product in the stream of commerce is strictly liable in tort to one who sustains injury because of its condition.[25] *McKisson v. Sales Affiliates, Inc.*[26] then asserted Texas' adoption of strict liability as embodied in Section 402A by holding that the absence of a sale does not preclude the holding of the distributor of a defective product strictly liable in tort.[27] *Freitas v. Twin Cities Fisherman's Cooperative Association*[28] confirmed the rule that liability could arise under Section 402a where the transaction by which a product was placed in the stream of commerce was essentially commercial in nature.[29]

Rourke v. Garza[30] was a case of first impression, as no prior Texas case had expressly held that strict liability may be imposed on the supplier of a chattel under a lease rather than a sale agreement. Relying on *Cintrone v. Hertz Truck Leasing & Rental Service*[31] and *Bachner v. Pearson*,[32] the court declared that

> a product placed in the stream of commerce by a lease by one in the business of leasing such products must be held to the same strict

20. *E.g.*, Bachner v. Pearson, 479 P.2d 319, 328 (Alaska 1970).
21. *Id.* at 328.
22. *Id.* at 326; Rourke v. Garza, 511 S.W.2d 331, 336 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ).
23. Martinez v. Nichols Conveyor & Eng'r Co., 52 Cal. Rptr. 842, 844-45 (Ct. App. 1966).
24. 440 S.W.2d 630 (Tex. Sup. 1969).
25. *Id.* at 633.
26. 416 S.W.2d 787, 792 (Tex. Sup. 1967) (beauty shop operator held strictly liable for plaintiff's burns and loss of hair caused by distributor's sample wave lotion).
27. *Id.* at 790-91; *accord*, Malinak v. Firestone Tire & Rubber Co., 436 S.W.2d 210, 214 (Tex. Civ. App.—Houston [1st Dist.] 1968, writ ref'd n.r.e.).
28. 452 S.W.2d 931 (Tex. Civ. App.—Corpus Christi 1970, writ ref'd n.r.e.). Here a truck driver sought recovery for personal injuries sustained in a fall from a platform leading to the top of an oil tank from the oil company which owned the tank and a boat service cooperative to whom the tank had been leased. After finding that neither the oil company nor the boat service cooperative was in the business of selling or leasing tanks, ladders, or platforms, the court ruled that the doctrine of strict liability was inapplicable.
29. *Id.* at 937-38.
30. 511 S.W.2d 331, 336 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ).
31. 212 A.2d 769 (N.J. 1965).
32. 479 P.2d 319 (Alaska 1970).

liability in the case of a defective product unreasonably dangerous to the user as would be the seller of such a product.[33]

Rourke has two significant aspects. First, the court adopted the premise that there is no distinction among the commercial functions of the manufacturer, retailer, and commercial lessor.[34] Second, the court recognized a new criterion for determining the applicability of strict liability.[35] Although it was previously considered essential to prove the technical existence of a sale of an allegedly defective product,[36] *Rourke* subordinated the technical necessity of a sale to the priority of determining whether a supplier of goods placed a defective product in the stream of commerce.[37]

Rourke does follow the three-step requirement rule for establishing strict liability in commercial leasing cases. First, although *Rourke* holds that strict liability applies to lessors only if the lessors are regularly engaged in the leasing business,[38] the court fails to define "engagement in the business of leasing," for the purposes of the doctrine. In determining what constitutes engagement in commercial leasing, other courts have looked to three main factors: the commercial aspect of the transaction, that is, whether a fee is paid,[39] the volume of the lessor's business,[40] and the relationship of the lease transaction to the sales function.[41] In the usual instance in which an established commercial leasing firm leases a product, generally a motor vehicle, to a lessee for a short period of time, the doctrine has been uniformly applied.[42] The doctrine has not been applied, however, where the lessor is not

33. Rourke v. Garza, 511 S.W.2d 331, 336 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ).

34. *Id.* at 336.

35. *Id.* at 336.

36. *E.g.*, Speyer, Inc. v. Humble Oil & Ref. Co., 403 F.2d 766, 772 (3d Cir. 1968), *cert. denied*, 394 U.S. 1015 (1969); Freitas v. Twin Cities Fisherman's Cooperative Ass'n, 452 S.W.2d 931, 938 (Tex. Civ. App.—Corpus Christi 1970, writ ref'd n.r.e.).

37. Rourke v. Garza, 511 S.W.2d 331, 336 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ).

38. *Id.* at 336.

39. *See* Stewart v. Budget Rent-a-Car Corp., 470 P.2d 240 (Hawaii 1970); Gallucio v. Hertz Corp., 274 N.E.2d 178 (Ill. Ct. App. 1971); Ettin v. Ava Truck Leasing, Inc., 251 A.2d 278 (N.J. 1969); Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769 (N.J. 1965); Stang v. Hertz Corp., 497 P.2d 732 (N.M. 1972).

40. Speyer, Inc. v. Humble Oil & Ref. Co., 403 F.2d 766, 772 (3d Cir. 1968); Conroy v. 10 Brewster Ave. Corp., 234 A.2d 415, 418 (N.J. 1967) (holding that *Cintrone* only applies to the mass producer or mass lessor).

41. Speyer, Inc. v. Humble Oil & Ref. Co., 403 F.2d 766, 772 (3d Cir. 1968); Freitas v. Twin Cities Fisherman's Cooperative Ass'n, 452 S.W.2d 931, 937 (Tex. Civ. App.—Corpus Christi 1970, writ ref'd n.r.e.).

42. Stang v. Hertz Corp., 497 P.2d 732 (N.M. 1972); *accord*, Bachner v. Pearson, 479 P.2d 319 (Alaska 1970); Stewart v. Budget Rent-a-Car Corp., 470 P.2d 240 (Hawaii 1970); Gallucio v. Hertz Corp., 274 N.E.2d 178 (Ill. Ct. App. 1971); Ettin v. Ava Truck Leasing, Inc., 251 A.2d 278 (N.J. 1969); Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769 (N.J. 1965).

a commercial business entity, even though the lease itself is commercial.[43]

The cases do not specify the extent to which the defendant's leasing business must be mass enterprise. Some decisions impose strict liability where the lease activity is a normal activity incident to the primary sales function, although the defendant lessor is not primarily engaged in the leasing business.[44] Other decisions reject the contention that an isolated lease transaction constitutes engagement in the leasing business, even if the lease is an incident to the sale.[45]

Rourke and *Freitas* provide the Texas definition of "engagement in the business of leasing." *Freitas* forbade the application of strict liability because the defendant's business did not entail the selling or leasing of the allegedly defective product and thus the rental of a ladder and platform was an isolated lease transaction.[46] The lease of scaffolding in *Rourke* was a commercially established procedure of a leasing company.[47] These cases suggest, then, that "engagement in the business of leasing" comprises a commercial lease transaction within the usual course of the defendant's leasing business.

After first demonstrating that the defendant lessor is engaged in the business of leasing, the plaintiff must then prove that the lessor leased a defective product.[48] *Rourke* defines a product as "defective" if the product exposes its user to an unreasonable risk of harm when used for the purpose for which it was intended.[49] "Unreasonable risk of harm" means that

> the article leased must be dangerous to an extent beyond that which would be contemplated by the ordinary user who leases it, with the ordinary knowledge common to the community as to its characteristics.[50]

Since *Rourke* holds that strict liability applies only to defects present when the commercial lessor places the product in the stream of commerce,[51] a question arises as to the extent of the lessor's liability for defects in products leased

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43. Katz v. Slade, 460 S.W.2d 608 (Mo. 1970) (city-owned and operated golf course not strictly liable for injuries caused by lease of defective golf cart.

44. See, for example, Price v. Shell Oil Co., 85 Cal. Rptr. 178, 184-85 (1970).

45. Speyer, Inc. v. Humble Oil & Ref. Co., 403 F.2d 766, 772 (3d Cir. 1968); W.E. Johnson Equip. Co. v. United Airlines, Inc., 238 So. 2d 98, 100 (Fla. 1970); Conroy v. 10 Brewster Ave. Corp., 234 A.2d 415, 418 (N.J. 1967); Freitas v. Twin Cities Fisherman's Cooperative Ass'n, 452 S.W.2d 931, 938 (Tex. Civ. App.—Corpus Christi 1970, writ ref'd n.r.e.).

46. Freitas v. Twin Cities Fisherman's Cooperative Ass'n, 452 S.W.2d 931, 937 (Tex. Civ. App.—Corpus Christi 1970, writ ref'd n.r.e.).

47. Rourke v. Garza, 511 S.W.2d 331, 333, 336 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ).

48. *Id.* at 336; *see* Bachner v. Pearson, 479 P.2d 317, 326 (Alaska 1970). *See also* RESTATEMENT (SECOND) OF TORTS § 402A (1965).

49. Rourke v. Garza, 511 S.W.2d 331, 334 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ).

50. *Id.* at 334.

51. *Id.* at 336.

over a long period of time and subject to wear because of use. The lessor who leases the same article many times to different lessees should be held liable for defects present each time the product leaves his hands.[52] On the other hand, because in a sale the article leaves the hands of the manufacturer or retailer only once, the difficulty of proving that the alleged defect existed at that time increases with the passage of time and the frequency of use of the article.[53] Under strict liability the commercial lessor, therefore, is held to a higher degree of care than either the manufacturer or retailer.[54] The New Jersey court maintains that the greater burden imposed upon the commercial lessor is both logical and defensible.[55] Since the lessor's representation of fitness for use is the same whether the product rented is new or used, the law should not accept any distinction in the obligation assumed by the lessor.[56]

In order to satisfy the third and final requirement for imposing strict liability the plaintiff must prove that the leased product reached him without substantial change in its condition or use.[57] As in the case of a seller, the doctrine will not subject the commercial lessor to liability for a defect in the leased product where the leased product was altered or utilized in a way not approved by the lessor.[58] Although not specifically mentioned in *Rourke*, the imposition of strict liability on commercial lessors is further justified by the economic incentive to increase the safety of products. Strict liability will compel the commercial lessor to closely inspect the fitness for use of rental products and reduce the economic benefits of leasing goods which are approaching the end of their useful lives.[59] Any argument that the commercial lessor may suffer a reduction in profits is negated by the concept of "risk distribution."[60] By implementing this theory, the commercial lessor can compensate injuries resulting from a risk he has created by purchasing insurance and passing the costs along to the public in the form of higher rental prices.[61]

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52. Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769, 777 (N.J. 1965).

53. The strict tort liability doctrine applies only to defects which were present when the product was placed in the stream of commerce by the defendant seller or manufacturer. *See, e.g.*, Greenman v. Yuba Power Prods., Inc., 27 Cal. Rptr. 697 (1963); Darryl v. Ford Motor Co., 440 S.W.2d 630 (Tex. Sup. 1969).

54. *See* Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769 (N.J. 1965).

55. *See id.* at 777.

56. *Id.* at 777.

56. Martinez v. Nichols Conveyor & Eng'r Co., 52 Cal. Rptr. 842, 844-45 (Ct. App. 1966) (bale ejector leased from defendant altered by plaintiff's employer).

58. *Id.* at 844-45.

59. *See* Bachner v. Pearson, 479 P.2d 319, 328 (Alaska 1970). Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769, 777 (N.J. 1965).

60. *See* Greenman v. Yuba Power Prods., Inc., 27 Cal. Rptr. 697, 701 (1963).

61. Bachner v. Pearson, 479 P.2d 319, 328 (Alaska 1970); Price v. Shell Oil Co., 85 Cal. Rptr. 178, 181-82 n.5 (1970); Cintrone v. Hertz Truck Leasing & Rental Serv., 212 A.2d 769, 778 (N.J. 1965).

The commercial lessor, then, "acts much like the retailer and manufacturer in placing products in the stream of commerce."[62] Also, the lessor is usually in a better position than the user to prevent the circulation of defective products.[63] Finally, the lessor, like a seller or manufacturer, is generally able to allocate damages and insure against injuries caused by defective products which he has placed in the stream of commerce.[64] For these reasons, the doctrine of strict liability seems applicable to commercial lease transactions.

Rourke exemplifies Texas' acceptance of the strict tort liability doctrine in a most comprehensive form. It also raises the question of whether the trend toward expanded, almost all-inclusive strict liability will continue. It is now certain that in Texas commercial lessors are subject to strict liability. While there are no cases in which a commercial lessor has been held strictly liable in tort for injuries to an "innocent bystander," it is conceivable that a third person, most likely a pedestrian hit by a leased auto, will in the future be able to recover from a commercial lessor.[65] It is also conceivable that licensors, who offer the public a privilege to use certain products, will be subject to the same strict liability as lessors.[66] It remains to be seen whether Texas will extend liability for injuries resulting from defective products from the manufacturer to other entities in the marketing enterprise such as the trademark licensor or the institutional lender who provides the necessary capital for the marketing effort.[67] *Rourke* might well prove to be the outer limit of the Texas theory. On the other hand, *Rourke* might well prove to be the precursor for an expanded, all-inclusive strict tort liability doctrine.

Frank J. Cavico, Jr.

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62. Bachner v. Pearson, 479 P.2d 318, 328 (Alaska 1970).

63. *Id.* at 328.

64. *Id.* at 328.

65. Darryl v. Ford Motor Co., 440 S.W.2d 630, 634 (Tex. Sup. 1969) (dissenting opinion) (third person recovery from the lessor can be based on the public policy to afford maximum protection for the public safety and the concept of "risk distribution"); *accord*, Elmore v. American Motors Corp., 75 Cal. Rptr. 652, 656-57 (1969).

All states adopting strict tort liability have extended recovery to bystanders when presented with the issue. *See* Caruth v. Mariana, 463 P.2d 83, 85 (Ariz. 1970).

66. Garcia v. Halsett, 82 Cal. Rptr. 420, 423 (Ct. App. 1970) (licensor of personal property held subject to strict liability in tort for injury resulting from a defect in the product). Although the licensor is not involved in the distribution of the product in the same manner as a commercial lessor, the licensor does provide the product to the public for use and plays more than a subsidiary role in the overall marketing enterprise of the product. *Id.* at 423.

67. Institutional lenders could become sufficiently engaged in writing "lease-finance" agreements to construe the transaction as more than an isolated aspect of their business. The lender could thus be in the business of writing such agreements and functioning as an integral link in the marketing enterprise by which products flow into the stream of commerce. Comment, *Finance Lessor's Liability for Personal Injuries*, 1 U. ILL. L.F. 154 (1974).