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TORTS, AUTOMOBILE GUEST STATUTE,
OWNER-PASSENGER NOT GUEST OF
DRIVER-GUEST

In the recent Virginia case of *Leonard v. Helms*¹ the owner of an automobile allowed his female companion to drive. The court held that the injured owner was not a guest, and therefore, proof of gross negligence was not essential to his right to recover for injuries received when his car, in which he was an occupant, crashed into a brick wall. In applying the facts of the case to the Virginia "Guest Statute"², the court had no precedent within the State.

The leading case in point was that of *Gledhill v. Connecticut Co. et al.*³ There the owner allowed his brother-in-law to drive while they were on a fishing trip. In interpreting a Connecticut "Guest Statute" the court found that the injured owner was not a guest, and said:

"To hold that if the owner of an automobile is riding therein and a friend is driving, the owner is the guest of the friend simply because the friend is driving, would be to import into the statute a meaning not expressed by the legislature."⁴

The *Gledhill* case followed that of *Gage v. Chapin Motors*⁵ where the same court had also held an injured owner not to be a guest. However, in the *Gage* case there was an element of mutual

¹ 170 F. Supp. 143, 269 F. 2d 48 (1959).

² Va. Code §8-646.1 (1950)—"No person transported by the owner or operator of any motor vehicle as a guest without payment for such transportation, and no personal representative of any such guest so transported shall be entitled to recover damages against such owner or operator for death or injuries to the person or property of such guest resulting from the operation of such motor vehicle unless such death or injury was caused or resulted from the gross negligence or willful and wanton disregard of the safety of the person or property of the person being transported on the part of such owner or operator."

³ 121 Conn. 102, 183 A. 379 (1936).

⁴ 183 A. 379 (1936), pp. 381.

⁵ 115 Conn. 546, 162 A. 17 (1932).

benefit where the owner and defendant's employee were giving the owner's automobile a "road test", and therefore, there was not a strict host-guest relationship.

One year after the *Gledhill* decision New York had an opportunity to rule on analogous facts in *Anderson et al v. Burkardt*.⁶ In this case the father-owner was injured while allowing his son to drive. The New York court adopted the reasoning of the Connecticut court and found that the father was not a guest, thereby permitting recovery in the absence of gross negligence.

The first application of the Virginia "Guest Statute" to an injured owner who was allowing someone to drive was that of the Pennsylvania court in the leading case of *Lorch v. Eglin*.⁷ Lorch was the owner and was injured in an accident which occurred in Virginia while Eglin was at the wheel. In holding that the owner was still the host the Pennsylvania court quoted from their earlier case of *Beam v. Pittsburgh Rys. Co.*:

"It would be flying in the face of all the authorities to hold that merely by allowing Shook [the friend of the owner] to drive the car Beam [the owner] made him a bailee of the automobile and completely abnegated his right of control over the operation of his own car."⁸

With that the court set forth the prime reason for holding that an owner is not a guest while permitting someone to drive, the theory being that the owner retains the right to control the automobile and thereby maintains his host status.

Two recent California cases have followed the reasoning of the Connecticut and New York courts on this subject. In *Ray v. Hanisch*⁹ two women were on a vacation, the owner permitting her companion to drive. The facts were of first impression before the California court, and in holding that the injured owner was not a guest, the court emphasized the philosophy of the Pennsylvania court in saying:

⁶ 275 N. Y. 281, 9 N.E.2d 929 (1937).

⁷ 369 Pa. 314, 85 A. 2d 843 (1952).

⁸ 366 Pa. 360, 77 A. 2d 634 (1951), pp. 643.

⁹ 147 Cal. App. 2d. 742, 306 P. 2d 30 (1957).

"There is an inference, in the absence of evidence to the contrary, that an owner present in his car has power to control it."¹⁰

The California court cited as authorities the cases of *Gledhill*,¹¹ *Burkardt*,¹² and *Eglin*.¹³ In the other California case¹⁴ the court followed the *Ray*¹⁵ case and held that the injured owner was not a guest while he permitted his brother to drive.

An exception to these rulings that an owner is not a guest is the holding of the Minnesota court in interpreting a "Guest Statute" of South Dakota.¹⁶ In *Phelps v. Benson*¹⁷ the owner and his wife were on an extended vacation trip with another couple. The court held that the injured owner was a guest while his vacation companion was driving. However, the case seems distinguishable in that the court spoke of "mutual benefit"¹⁸ and found from this that each party was the guest of the driver regardless of who may have been driving at the time.

In Virginia, the only case with similar principles as those applied in the instant case is that of *Mayer v. Puryear*.¹⁹ There, the defendant-owner permitted the plaintiff to drive. In transferring her small child from the front to the back seat, the owner temporarily entangled the child's feet in the steering wheel and thereby contributed to the accident. The court held that the non-driving owner was still the host, and that moving a small child to the back seat was not "gross and wanton" conduct; the guest-driver did not prevail. The logic of the

¹⁰ *Ibid.*, pp. 33.

¹¹ *Gledhill v. Connecticut Co. et al*, 121 Conn. 102, 183 A. 379 (1936).

¹² *Anderson et al v. Burkardt*, 275 N.Y. 281, 9N.E. 2d 929 (1937).

¹³ *Lorch v. Eglin*, 369 Pa. 314, 85 A. 2d 843 (1952).

¹⁴ *Ahlgren v. Ahlgren*, 152 Cal. App. 2d 723, 313 P. 2d 88 (1957).

¹⁵ *Ray v. Hanisch*, 147 Cal. App. 2d. 742, 306 P. 2d. 30 (1957).

¹⁶ South Dakota Statute, Sec. 44.0362 (1939).

¹⁷ 252 Minn. 457, 90 N.W. 2d. 533 (1958).

¹⁸ *Ibid.*, pp. 542.

¹⁹ 115 F. 2d. 675 (4th Cir., 1940).

Mayer court aided the *Helms* court in finding that the host-guest relationship was undisturbed when the guest was allowed to drive.

Thus, in the instant case of *Leonard v. Helms*²⁰ the court was well-supported in finding that the injured owner was not a guest. In the *Helms* case the Virginia "Guest Statute" was given added flexibility in that it not only was interpreted to protect the owner from the claims of a gratuitous guest, but further, it was not a barrier to the owner's right to recover when he permits a guest to drive.

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²⁰ 170 F. Supp. 143, 269 F. 2d. 48 (1959).