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Apparent Agency--An Extension of the Deep Pocket Theory

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APPARENT AGENCY—AN EXTENSION OF THE DEEP POCKET THEORY

I. INTRODUCTION

"[T]he trend of the law is and has been to expand the liability of an enterprise to its employees and to third persons injured because of activities carried on *in behalf of the enterprise* or because of defects of its products."[1] The desire to compensate injured people and concomitant economic realities have necessitated an expansion in the theories of liability. The ideas and concepts of *respondeat superior*, strict liability, and traditional agency analysis have been applied to the benefit to remote victims at the expense of the solvent principal, manufacturer, or master.

The current growth of the franchise market seems to demand that this list of solvent, potential "tortfeasors" be expanded to include that entrepreneur of easy money, the franchisor. The impact of the franchise on America's economy and the accompanying growth of small islands of enterprises built on a look-alike plan is apparent to anyone driving the highways in search of a hamburger or shopping nationwide for a wide variety of products.

An analysis of the problems of liability of franchisors in relation to their unknown and remote clientele finds a ready vehicle in the service station network spanning the country. Franchises first developed principally for the distribution of automobiles and gasoline,[2] and it is through the filling stations that the franchise has met its fullest application, covering a variety of arrangements and potential injuries.

There are innumerable variations in the arrangements made between the oil companies, their distributors, and the friendly "man who wears the star", and these factors are pertinent to tests applied by the courts to determine relationships and liability. Predominantly, the oil distribution system, like any franchise, is predicated on a local sales network, operating from an inventory brought to it by a wholesale

1. Hetherington, *Trends in Enterprise Liability: Law and the Unauthorized Agent*, 91 STAN. L. REV. 76 (1966) (emphasis added).

2. Note, *Liability of a Franchisor for Acts of the Franchisee*, 41 S. CAL. L. REV. 143 (1967).

distributor who handles the products of one major producer exclusively. This wholesaler receives the bulk or packaged products from the producing company, stores it temporarily at a central location, and distributes it as needed to the retailing service station operator. This operator is the point of public contact for car owners; and he sells the gasoline, oil, and other products of the major producer, displaying on the service station premises the signs and advertising matter of the producer. Advertising, both at point of sale and elsewhere, is normally in terms of the "brand name" product rather than of the particular service station, and is aimed at the traveling public generally unfamiliar with the local operator. Frequently, a prime factor in this "brand name" advertising is "free services" and the direction of the ads will therefore go beyond the virtues of the product to the courtesy and helpfulness of the dealer who is necessarily identified as the producer's representative,[3] whether he is a lessee or consignee.

If the problem were only a matter of an exploding can of oil, or perhaps anti-freeze that isn't, it would find definition in the field of products liability; but the problem is far from that simple. What can be done for the customer who falls on an oil spot,[4] who meets with an infamous repair job to his brakes and is subsequently injured,[5] whose oil gasket is not repaired properly and his car is damaged,[6] or one perhaps who wishes his tires had been properly repaired so he wouldn't have had an accident?[7] A more complete illustration of the problem is seen when we envision the man who buys a car from a service station operator who "fixed" the brakes, and despite his trust in that "brand-name" revolving high above the station, suffers serious injury when the brakes later fail.[8] What relief, if any, for these unfortunates, if the operator is insolvent?

It has been suggested that the minimum responsibility for the producer would be to select financially responsible lessees.[9] But is that

3. Annot., 83 A.L.R.2d 1282, 1284 (1962).

4. Shaver v. Bell, 74 N.M. 700, 397 P.2d 723 (1964); Texas Co. v. Wheat, 140 Tex. 468, 168 S.W.2d 632 (1943).

5. Cawthon v. Phillips Petroleum Co., 124 So. 2d 517 (Fla. App. 1960).

6. Coe v. Esau, 377 P.2d 815 (Okla. 1963).

7. Levine v. Standard Oil Co., 249 Miss. 651, 163 So. 2d 750 (1964); Westre v. DeBuhr, 82 S.D. 276, 144 N.W.2d 734 (1966).

8. Gizzi v. Texaco, Inc., 437 F.2d 308 (3d Cir. 1971).

9. Comment, *Liability of Oil Company for its Lessee's Torts*, 1965 U. ILL. L. FORUM 915 (Winter 1965).

realistic? What of the operator who owns his own station (subject to three mortgages) and takes the products on consignment, risking all losses, reaping all profit, avoiding all judgments? Who will worry about the financially irresponsible salesman of his products? Can it be a voluntary ideal or can it be enforced jurisprudentially by any valid test?

The search for the solution to this problem has followed ideas of "right of control" and traditional agency analysis couched in terms of master and servant, as distinguished from an independent contractor. Alternatively, attempts have been made to apply the "public use" doctrine[10] where a lease rather than a distributorship or consignment arrangement has been involved.[11] One article alluding to risk prevention, risk shifting, and risk distribution suggested strict liability as a solution, but there is little evidence of its application in this field beyond the sale of the products themselves.[12]

Most frequently the test applied by the courts has been that of "right of control". Although the service station distribution system (like other common franchises) is an outgrowth of economic factors and has little to do with the concept of master and servant, the distinctions have been treated factually and made to turn on the idea of control or right of control; and without either, liability is lost as the dealer is considered to be an independent contractor. The possible and most frequent factors used in this test are the existence of a formal contract, the manner of compensation, who holds the title to the product and the property, the degree of supervision, and the manner in which advertising presents the relationship.[13]

Using this more or less precise evidentiary test, the greatest number of cases are left open and susceptible to summary judgment. While there are certainly examples in which dealer/operators have been found to be the actual agent or servant of the solvent producer, these cases seem to be limited to injuries on the premises, to the public and to the

10. *See, e.g.*, A. CASNER & W. LEACH, CASES AND TEXT ON PROPERTY 411 (2d ed. 1969) which includes the broad definition of liability concerning leased land involving the admission of large numbers of the lessee's patrons.

11. Comment, *Liability of Oil Company for its Lessee's Torts*, 1965 U. ILL. L. FORUM 915, 918.

12. *Id.* at 920.

13. Annot., 83 A.L.R.2d 1282, 1284 (1962).

employees of the operator.[14] The far greater number of cases involving both accidents on the premises, as well as torts whose consequences are felt somewhat more remotely in time and space, have been kept from the jury as incapable of proof. This proof, once again, is under the right of control test, ignoring the principles of estoppel and the reliance the customer may place in the "brand name" and its subsidiary influences.

II. RIGHT OF CONTROL TEST APPLIED

The most vivid picture of this test and the consequences can be viewed through a series of illustrative cases in which it has been applied; the following sample is necessarily only a portion of the material available. Comparison will follow as to the use of an alternative means of decision, apparent agency as applied.

In *Shaver v. Bell*,[15] a fall on an oil spot resulted in summary judgment for the lessee oil company who had sub-leased to the defendant operator. The court there found that standard signs, colors, and credit card facilities meant nothing legally; and without control by the lessee established, there could be no liability on his part. It was noted, moreover, that a slight change in the facts might lead to a determination for the jury. This concept was also used in the earlier case of *Texas Co. v. Wheat*,[16] involving another fall, in which the court found that since there was no specification by the oil company as to the details of cleaning and there was no proof of any other control, the operator would bear the liability alone. Here the court found that the relationship was one of landlord and tenant, rather than master and servant, since the operator bought and paid for Texaco's products, bore all expenses, stood all losses, did all the hiring and firing, and appropriated all profits. The public use doctrine was ignored despite the existence of a lease and the admission of patrons. The facts established that Texaco set the standards for cleaning even though they left the details to the operator, but the court found this insufficient to establish control.

In the area of auto repairs there have been numerous "right of

14. Edwards v. Gulf Oil, 69 Ga. App. 140, 24 S.E.2d 843 (1943); Cooper v. Graham, 231 S.C. 404, 98 S.E.2d 843 (1957); Hubbard v. Rowe, 192 S.C. 12, 5 S.E.2d 187 (1939).

15. 74 N.M. 700, 397 P.2d 723 (1964).

16. 140 Tex. 468, 168 S.W.2d 632 (1943).

control" cases. The faulty repair of an oil gasket and the subsequent damage to the engine in *Coe v. Esau*[17] led to a successful demurrer for the oil company in that the distinctive colors, trademark signs, and credit card use did not establish the control necessary to the *respondeat superior* theory of the complaint. The court simply found the evidence insufficient to raise the inference of company control or right of control. An appellate reversal of *Westre v. DeBuhr*[18] declared that there should have been a directed verdict in favor of the oil company, and so ordered, again ruling that the operator was an independent contractor as a matter of law. *Westre*, like *Levine v. Standard Oil Co.*,[19] involved personal injuries resulting from faulty tire repair. In *Levine* summary judgment was granted, relieving the oil company of liability for the injuries, the court finding that the lessee had complete control of the station operation and that the fact that he used oil company signs and uniform insignia and benefitted from their national advertising was of no consequence.

In *Cawthon v. Phillips Petroleum Co.*,[20] involving an accident resulting from an improper brake repair job, a new twist was added. There the court granted summary judgment in favor of the oil company in the absence primarily of advertising establishing a principal-agent relationship although other control factors were considered. Again the "right-of-control" test was applied and the advertising was found to be insufficient to estop Phillips from denying the operator's agency. Yet it should be noted that the ads referred to "all" of the things "your car needs" and that "brake service" and "mechanic on duty" signs were displayed along with the Phillips sign. The court found that the Phillips signs were designed only to show that their products were sold there and that there was no control of any kind over an independent operator who purchased these products outright.

Even where the representatives of the oil company regularly visited the premises, a judgment *non obstante verdicto* was granted for the defendants in *Green v. Independent Oil Co.*,[21] as there was no evidence of suggestions or instructions regarding control of the operation. The

17. 377 P.2d 815 (Okla. 1963).
18. 82 S.D. 276, 144 N.W.2d 734 (1966).
19. 249 Miss. 651, 163 So. 2d 750 (1964).
20. 124 So. 2d 517 (Fla. App. 1960).
21. 414 Pa. 477, 201 A.2d 207 (1964).

court found that the visits were, therefore, not pertinent to the relationship.

Another judgment *non obstante verdicto* resulted in *Smith v. Cities Service Oil Co.*[22] Here the control test was applied in favor of defendant, Cities Service, since the operator set the hours of operation, hired and fired attendants, fixed salaries and working conditions, and kept his own books and records. The fact that he operated a repair business in connection with the station was discounted because the oil company derived no profit therefrom.

In *Gulf Refining Co. v. Brown*,[23] the consignee sold kerosene mixed with gas and the resulting explosion caused injury. The consignor oil company was held liable because the consignment was so arranged as to leave little or no discretion to the operator. This liability suddenly brings us full circle to the sale of products themselves.

An interesting, if somewhat allegorical, case is *Sinclair Refining Co. v. Redding*.[24] There the right of control test was again applied to relieve the oil company of liability when a pedestrain tripped over an advertising sign and was injured.

III. GIZZI V. TEXACO, INC.[25]-A NEW TEST

Gizzi involved the purchase of a 1958 Volkswagen bus from the operator of a Texaco station in Westville, New Jersey. The operator interested Gizzi in the vehicle and offered to put it in good working order if Gizzi would buy it. Gizzi agreed and the operator commenced the work, which included the installation of a new master brake cylinder and a complete examination and testing of the brake system. On June 18, 1965, Gizzi paid for the car and took possession and late the same day, he and a passenger were seriously injured when the brakes failed and the bus struck the rear of a tractor trailer on the Schuylkill Expressway.

Texaco, Inc. was the only defendant named in the suit that followed. It was found that the station was owned by a third party who

22. 346 F.2d 349 (7th Cir. 1965).
23. 93 F.2d 870 (4th Cir. 1938).
24. 108 Ga. App. 466, 133 S.E.2d 421 (1963).
25. 437 F.2d 308 (3d Cir. 1971).

leased it to the operator, but that Texaco owned certain pieces of equipment and supplied the operator with the normal insignia to indicate that Texaco products were sold there. It was established that Gizzi was a steady customer at the station in question. It was also found that Texaco received *no* part of the purchase money; and that although Gizzi received a Texaco credit invoice for his purchase receipt, that this was only an available convenience utilized by the operator to record the transaction. Evidence was introduced to establish substantial national advertising, the purpose of which was to convey the impression that Texaco dealers were skilled in automotive servicing. The advertising was not limited to certain services or products. The record revealed that approximately 30 per cent of the Texaco dealers in the country engage in the selling of used cars and that this practice is known to and acquiesced in by the corporation. In fact, the personnel of a regional Texaco office across the street from the station were specifically aware of the practice of used car sales in Westville. Additionally it was established that there were signs displayed on the premises to the effect that an "expert foreign car mechanic" was on the premises.

The United States District Court for the Eastern District of Pennsylvania granted a directed verdict for the oil company based on the following reasoning:

> In short, nobody could reasonably interpret any of these slogans or representations or indicia of control as dealing with anything more than the servicing of automobiles, and to the extent of putting gas in them and the ordinary things that are done at service stations.[26]

In vacating and remanding the case, the United States Court of Appeals, Third Circuit, held that:

> While the evidence on behalf of appellants by no means amounted to an overwhelming case of liability, we are of the opinion that reasonable men could differ regarding it and that the issue should have been determined by the jury, after proper instructions from the court.
>
> Questions of *apparent authority* are questions of fact and are therefore for the jury to determine.[27]

The theory advanced by *Gizzi*, as reflected in the appellate opin-

26. *Id.* at 310.

27. *Id.* at 310 (emphasis added).

ion, was that Texaco had clothed the operator with the apparent authority to make the necessary repairs and sell the vehicle and that as Gizzi had relied on this apparent authority, Texaco should be estopped from denying that an agency did in fact exist.[28] The court in recognizing this theory in the area of oil distribution arrangements had made a definite inroad into the older "right of control" test.

The court's opinion relied significantly on cases which ably stated the law as it generally applies to apparent agency without regard for the distinguishable factual relationships inherent in the "right of control" test. In support of the idea that a third person must rely on indicia of authority originated by the principal in order to recover under apparent agency, the court cited cases involving the relationship between an insurer and a field underwriter,[29] a tractor trailer driver and the owner of the truck,[30] a clerk and an insurance agent,[31] and a store and its salesman.[32] The court, in finding that this authority can be manifested directly to a third person or to the community by signs or advertising, cited authority of the broadest type.[33] Likewise, the court's finding that the determination is a question for the jury was supported by cases involving factually different relationships from the oil distribution system but again by cases generally defining the concept of apparent authority and agency.[34]

IV. APPARENT AUTHORITY AND AGENCY

The three essential points of apparent agency as considered by the court in *Gizzi* were first, that a third person must rely on indicia of authority originated by the principal; secondly, that indicia may be

28. *Id.*

29. Bowman v. Home Life Ins. Co., 260 F.2d 521 (3d Cir. 1958); Elger v. Lindsay, 71 N.J. Super. 82, 176 A.2d 309 (1961).

30. N. Rothenberg & Son, Inc. v. Nako, 49 N.J. Super. 372, 139 A.2d 783 (App. Div. 1958).

31. Mattia v. Northern Ins. Co., 35 N.J. Super. 503, 114 A.2d 582 (App. Div. 1955).

32. Hoddeson v. Koos Bros., 47 N.J. Super. 224, 135 A.2d 702 (App. Div. 1957).

33. RESTATEMENT (SECOND) OF AGENCY §§ 8, 8B, 27 (1957).

34. System Investment Corp. v. Montview Acceptance Corp., 355 F.2d 463 (10th Cir. 1966) (corporation stockholder and his attorney); Frank Sullivan Co. v. Midwest Sheet Metal Works, 335 F.2d 38 (8th Cir. 1964) (building contractor and partnership); Lind v. Schenley Industries, Inc., 278 F.2d 79 (3d Cir. 1960) (employee and direct superior in same distilling firm).

manifested directly to the third person or to the community; and finally, that such agency is a question for the jury.

Apparent authority (agency) is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons.[35] It is entirely distinct from authority either express or implied, although the power to deal with third persons may be identical. The agency exists only with regard to those who believe and have reason to believe that there is authority. There can not be apparent authority created by an undisclosed principal.[36]

Apparent agency is "created by written or spoken words or any other conduct of the principal which, *reasonably interpreted*, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him."[37] This agency will exist as to third persons who know of prior conduct and representation but are *not familiar with the extent* of such powers.[38]

"A manifestation of authority constitutes an invitation to deal with such servant and to enter into relations with him which are *consistent with the apparent authority*."[39] A factor to be considered is whether the act is "actuated, *at least in part*, by a purpose to serve the master. . . ."[40] In determining that aspect, an element for evaluation is whether the master has reason to expect that such an act will be done or whether or not it is *commonly done*.[41]

Apparent agency has been distinguished from estoppel by the realization that without the change of position in estoppel, liability is doubtful, but that apparent agency does not require such a change in position.[42]

> One who represents that another is his servant or other agent and thereby causes a third person justifiably to rely upon the care

35. RESTATEMENT (SECOND) OF AGENCY § 8 (1957).

36. *Id.*, comment *a*.

37. RESTATEMENT (SECOND) OF AGENCY § 27 (1957) (emphasis added).

38. *Id.*, comment *d* (emphasis added).

39. RESTATEMENT (SECOND) OF AGENCY § 267, comment *a* (1957) (emphasis added). It is there noted that the rules of § 228 are to be applied.

40. RESTATEMENT (SECOND) OF AGENCY § 228 (1957) (emphasis added).

41. *Id.*, § 229 (emphasis added).

42. RESTATEMENT (SECOND OF AGENCY § 8, comment *c* (1957).

> or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such.[43]

Apparently the distinction of estoppel is a token theoretical argument in the search for a solution to our problem, and the distinction from a practical point of view is insignificant. Without an element of reliance, there would be no need to invoke the theory.

The key elements upon which the test seems to hinge are a definition of the scope of the authority, the extent of the manifestations, and the reasonableness of the reliance. These factors necessarily find definition only in the factual elements of the cases.

Reasonable diligence to determine the agent's authority has been required,[44] the knowledge of the principal that his agent is exercising authority has been considered,[45] the totality of the circumstances has been applied to seek inconsistency.[46] The requirement that the principal create the apparent authority by his own acts has led to tests of statements and conduct,[47] and the lack of ordinary care,[48] on the part of both the principal and the third person. In determining the application of apparent agency, courts have considered the situation in which the principal fails to disapprove so as to lead the public to believe in the possession of authority.[49] The scope has been defined broadly as at least equal to that conveyed ordinarily to agents of similar character.[50]

All of these attempts at definition are necessarily vague unless applied to the facts in evidence and resultantly the concept and existence of apparent agency has been recognized as a question for the jury to decide.[51]

This idea of factual determination has been applied to the

43. RESTATEMENT (SECOND) OF AGENCY § 267 (1957). This principle was recognized in South Carolina in the case of *Federal Land Bank of Columbia v. Ledford*, 194 S.C. 347, 9 S.E.2d 804 (1940).

44. 3 AM. JUR.2d *Agency* § 78 (1949).

45. *Id.*, § 73.

46. *Id.*, § 75.

47. Carver v. Farmers & Bankers Broadcasting Corp., 162 Kan. 663, 179 P.2d 195 (1947).

48. 3 AM. JUR.2d *Agency* § 74 (1949).

49. *Id.*

50. *Id.*, § 75.

51. *Id.*, § 77.

wholesale distributor in an oil company situation,[52] to a timber cutting contract arrangement,[53] cotton purchase contracts,[54] mortgage foreclosure,[55] as well as construction contracts,[56] insurance sales,[57] mishandling of death messages,[58] and even to a tort committed by the employee of a tire company.[59]

There is, however, a reluctance to apply apparent agency when it comes to the franchise situation at issue herein. At that juncture it appears that the courts have preferred the test of control and have exercised their discretion freely as a matter of law. This approach has gone so far as to find the relationship of the independent contractor where the advertising used the word "dealer" rather than "agent" or "representative".[60]

V. CONCLUSION

It would seem that the *Gizzi* case has applied a well-established concept to an area where it heretofore has not been used. The liability of an oil company to its remote clientele has been a matter of earlier concern,[61] and a variety of approaches were then suggested, although it soon became apparent that in this area the courts were applying agency law through the more limited view of master and servant and *respondeat superior*. *Gizzi* represents yet another possibility by considering the reasonable state of mind of the victim with its source depending on the factual circumstances, allowing for a jury determination of responsibility.

There are certain limits to this approach inasmuch as "manifestations" and "reliance" are required. For example, the employee of the dealer is not included because he is *not* able to rely on any manifesta-

52. Phillips v. Davidson, 24 F. Supp. 184 (E.D.S.C. 1938); Hendrix v. Phillips Petroleum Co., 203 Kan. 140, 453 P.2d 486 (1969).

53. Hinson v. Roof, 128 S.C. 470, 122 S.E. 488 (1924).

54. Dowling v. Fenner, 131 S.C. 62, 126 S.E. 432 (1925).

55. Scott v. Newell, 146 S.C. 385, 144 S.E. 82 (1928).

56. Tate v. Claussen-Lawrence Const. Co., 168 S.C. 481, 167 S.E. 826 (1933).

57. Williams v. Commercial Cas. Ins. Co., 159 S.C. 301, 156 S.E. 871 (1931).

58. Williams v. Western Union Tel. Co., 138 S.C. 281, 136 S.E. 218 (1927).

59. Mack v. Bennett Tire & Battery Co., 207 S.C. 70, 34 S.E.2d 472 (1945).

60. Kaden v. Moon Motor Car Co., 26 S.W.2d 812 (Mo. App. 1930).

61. Comment, *Liability of Oil Company for its Lessee's Torts*, 1965 U. ILL. L. FORUM 915.

tion of the franchisor contrary to his likely understanding of the arrangements. Nevertheless workman's compensation will alleviate his difficulty for the most part. In the sale of products, the concepts of strict liability will preclude the need for an argument of apparent agency. In the situation where there is no change of position we have seen that practically applied, liability will not arise, though theoretically there is agency. The strongest application of apparent agency would be in the area of subsidiary services used as an inducement to buy the products of the manufacturer, *e.g.*, repair work at service stations, restroom facilities, even the availability of road maps, in fact, almost any area where advertising by the franchisor is used to induce entry by prospective customers. The law of the business invitee[62] then is expanded in an area where the relationship between the retailer and the solvent supplier is more tenuous perhaps but equally open to suspicion, if compensation for the injured party is desired.

The problems of defining reasonable reliance, the scope of the apparent authority, the significance of the manifestations and in fact, simply defining the word "apparent" take the issues necessarily to the jury where the likelihood of recovery is much higher than that under the right of control test.

The area of franchise liability broadly construed has arguably been adapted to the control theory in the terms of the Lanham Act[63] insofar as the sale of a license to use a franchise trademark assumes that the public is not to be deceived and that there is an element of control.[64] The amount of that control is, however, unspecified by the statute and the existence of actual agency has been hinged on the need for "sufficient" control.[65]

The application of apparent agency to the definition of what is "sufficient" provides a relationship satisfactory for recovery ". . . if the alleged principal created the basis for the belief, whether intentionally, or negligently, as by remaining silent knowing that the alleged agent is holding himself out as an agent."[66]

62. *See generally* Annot., 116 A.L.R. 1205 (1938).

63. 15 U.S.C. § 1051 *et seq.* (1963).

64. Note, *Liability of a Franchisor for the Acts of the Franchisee*, 41 S. CAL. L. REV. 143 (1967).

65. *Id.* at 149.

66. *Id.*

Use of this concept will force the franchisor (or oil company) to take over supervisory responsibilities since he will be unable to avoid liability simply by refusing "control". The franchisor has allowed the reliance situation to arise and arguably should bear the loss.[67]

If the risk is comprehensively put on the franchisor by strict liability there are severe economic consequences and the probable ruin of the enterprise. But in recognizing the need to protect third parties by applying the concept of apparent agency we are putting teeth in the language of the Lanham Act and protecting the public from deceit in reliance on a trademark. We are forcing the franchisor to take control, at a minimum, of what he advertises, if he chooses to avoid the consequences of the franchisee's acts.[68]

Whether or not this is the fullest extent of the need or just a minimum standard depends upon the premise adopted for tort law generally. It suffices to say that given *Gizzi* and the arguments presented therein, that an extension of apparent agency is possible in the franchise area, and that the Lanham Act can be colored seriously by any such application. The recent growth in the franchise industry should lead very soon to a full testing of this concept.

> These instances where the courts are willing to hold the oil companies liable for one reason or another indicate that the law concerning the liability of oil companies for their lessee's torts may well be following a trend that will parallel and draw support from the law of the liability of manufacturers to the consumers of their products.[69]

This language, written in 1965, need only be slightly modified to reflect the change in direction, albeit to the same end, indicated by *Gizzi*. Apparent agency becomes the vehicle to continue the trend, rather than products liability, stricter agency analysis, or even the public use doctrine.

A recent Texaco, Inc. television ad is noteworthy in its explicit limitation to the *products* available at its various stations. How much impact has already been realized?

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67. *Id.* at 153.

68. *Id.*

69. Comment, *Liability of Oil Company for its Lessee's Torts*, 1965 U. ILL. L. FORUM 915, 918.