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**Automobiles—Torts—Guest Statute: Ford v. Etheridge, 377 P.2d
(N.M. 1962)**

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COMMENTS

AUTOMOBILES—TORTS—GUEST STATUTE*—The automobile guest statute¹ took from the guest the common law right of action against the owner or operator of the automobile for injuries suffered by the guest due to the ordinary negligence of the driver. The determination of “guest” status has been and continues to be a major problem in construing such a statute.² This comment undertakes to discuss the problem of whether an owner can be a guest in his own automobile where he is a non-driving occupant. Few courts have had occasion to pass on this question.³ The landmark case, *Gledhill v. Connecticut Co.*,⁴ held that the owner was not a “guest” under the Connecticut guest statute⁵ and could therefore recover for ordinary negligence of the driver. The *Gledhill* case has been followed by most courts which have considered the question.⁶ The Restatement of Torts⁷ concurs with *Gledhill*. A contrary conclusion has been reached in only one jurisdiction.⁸ The New Mex-

* Ford v. Etheridge, 377 P.2d 386 (N.M. 1962).

1. See *Automobile Guest Laws Today, Report of the Automobile Insurance Committee—1960*, 27 Ins. Counsel J. 223 (1960), for a brief analysis of each guest statute in the United States.

2. *Ibid.*

3. See Annot., 65 A.L.R.2d 312 (1959); Annot., 50 A.L.R.2d 1281, 1301 (1956).

4. 121 Conn. 102, 183 Atl. 379 (1936).

5. Conn. Acts 1927, ch. 308, § 1, repealed by Conn. Acts 1937, ch. 270.

6. *Wilson v. Workman*, 192 F.Supp. 852 (D.C. Del. 1961), construing Delaware guest statute, Del. Code Ann. tit. 21, § 6101 (1953); *Leonard v. Helms*, 170 F.Supp. 143 (W.D. Va. 1959), *aff'd*, 269 F.2d 48 (4th Cir. 1959), 2 W. & M. L. Rev. 520 (1959-60), construing Virginia guest statute, Va. Code Ann. § 8-646.1 (1950); *Walton v. Tull*, 356 S.W.2d 20 (Ark. 1962), construing Arkansas guest statute, Ark. Stat. Ann. § 75-913 (1957); *Ahlgren v. Ahlgren*, 152 Cal.App.2d 723, 313 P.2d 88 (4th Dist. Ct.App. 1957), and *Ray v. Hanisch*, 147 Cal.App.2d 742, 306 P.2d 30 (2nd Dist. Ct.App. 1957), 4 U.C.L.A. L. Rev. 652 (1957), construing California guest statute, Cal. Vehicle Code § 17158 (subsequently amended in 1961—see § 17158, Supp. 1962); *Peterson v. Winn*, 373 P.2d 925 (Idaho 1962), construing Idaho guest statute, Idaho Code Ann. § 49-1401 (1957); *Naphtali v. Lafazan*, 8 App.Div.2d 22, 186 N.Y.S.2d 1010 (Sup.Ct. 1959), *aff'd*, 171 N.E.2d 462 (1960), construing Ohio guest statute, Ohio Rev. Code Ann. § 4515.02 (Page 1954); *Henline v. Wilson*, 111 Ohio App. 515, 174 N.E.2d 122 (1960), construing Ohio guest statute, Ohio Rev. Code Ann. § 4515.02 (Page 1954); *Lorch v. Eglin*, 369 Pa. 314, 85 A.2d 841 (1952), construing Virginia guest statute, Va. Code Ann. § 8-646.1 (1950); *Parker v. Leavitt*, 201 Va. 919, 114 S.E.2d 732 (1960), construing Virginia guest statute, Va. Code Ann. § 8-646.1 (1950).

7. Restatement, Torts § 490, comment a (1934).

8. *Phelps v. Benson*, 252 Minn. 457, 90 N.W.2d 533 (1958), Note, 32 So. Cal. L. Rev. 93 (1958-59), Note, 38 Texas L. Rev. 110 (1959-60), construing South Dakota guest statute, S.D. Code § 44.0362 (1939). See *Murray v. Lang*, 252 Iowa 260, 106 N.W.2d 643 (1960) (owner's son held to be a “guest” within the meaning of the Iowa guest statute, Iowa Code Ann. § 321.494 (1949)).

ico Supreme Court, in construing its guest statute,⁹ has never passed on this question.¹⁰

In excluding the owner from the scope of guest status under the Connecticut statute¹¹ the *Gledhill* court¹² relied on the dictionary definition of "guest"¹³ and an analogy to an innkeeper,¹⁴ and concluded that it was not the expressed intent of the legislature to hold the owner to be a guest under the

9. N.M. Stat. Ann. § 64-24-1 (1953):

No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

10. "Guest" is not defined by the New Mexico guest statute, but the statute does speak of "guest without payment." *Ibid.* Thus, non-payment by the passenger appears to be the controlling element as to the determination of "guest" status. See *Davis v. Hartley*, 69 N.M. 91, 364 P.2d 349 (1961), where the court held that an occupant who requested the driver to make a certain trip and paid three dollars for gasoline en route was a guest, not a fare-paying passenger. See also Note, 8 Clev.-Mar. L. Rev. 279 (1959).

However, a prospective purchaser of a motor vehicle, *i.e.*, a non-paying business guest, does not have "guest" status. N.M. Stat. Ann. § 64-24-2 (1953).

11. Conn. Acts 1927, ch. 308, § 1, repealed by Conn. Acts 1937, ch. 270:

No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

"The purpose of . . . [the guest statute] was to deny a recovery for negligence against one transporting in his automobile a member of his family, a social guest, or a casual invitee in an action brought by the recipient of his hospitality." *Gledhill v. Connecticut Co.*, 121 Conn. 102, 183 Atl. 379, 380 (1936), quoting from *Bradley v. Clarke*, 118 Conn. 641, 174 Atl. 72, 73 (1934).

"It is plain that the person must be transported as a guest of the other party, and the transportation must be without payment, in order for the provisions of the statute to apply." 183 Atl. at 380. Compare with note 10 *supra*.

12. In the *Gledhill* case, *Gledhill* and *Graham* were riding in *Gledhill's* automobile. They were going on a fishing trip. *Graham* was driving at *Gledhill's* request, and *Gledhill* was sitting on the front seat at the time of the accident.

13. *Gledhill v. Connecticut Co.*, 121 Conn. 102, 183 Atl. 379, 380 (1936): "'Guest' is defined as . . . 'a visitor entertained without pay; hence, a person to whom the hospitality of a home, club, etc., is extended.' As used in the statute the term imports that the person riding in a motor vehicle is a recipient of the hospitality of the owner or driver."

14. *Ibid.*: "In *Walling v. Potter*, 35 Conn. 183, 185 [(1868)], in considering whether the relation of innkeeper and guest arose, we said that 'any one away from home, receiving accommodations at an inn as a traveler, is a guest,' and that 'a guest is one who patronizes an inn as such.'"

facts of the case.¹⁵ The Connecticut courts strictly construe statutes in derogation of the common law,¹⁶ and the courts which have followed the reasoning of *Gledhill* do likewise.¹⁷

The only guest statute case wherein the owner was held to be a guest in his automobile, *Phelps v. Benson*,¹⁸ represents a more sensible approach to the problem. The Minnesota court, construing the South Dakota guest statute,¹⁹ rejected *Gledhill's* dictionary definition of "guest" and the innkeeper analogy as being "too restrictive as applied to these motor vehicle guest statutes."²⁰ Holding that an owner could be a guest in his automobile,²¹ the controlling

15. *Gledhill v. Connecticut Co.*, *supra* note 13, at 381: "There is nothing from which the inference could be drawn that Gledhill was enjoying the hospitality of Graham. The most that is indicated is that Graham was performing a gratuitous service for Gledhill. Proof of this fact does not make Gledhill the guest of Graham. 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."

16. See *Stoll v. Almon C. Judd Co.*, 106 Conn. 551, 138 Atl. 479 (1927).

On construction of the guest statute, the court in *Gledhill* said, 183 Atl. at 380: "[The guest statute] denies to a certain class of passengers in an automobile a right to recover compensation from the owner or driver for injuries received by reason of the negligence of either in its operation, and the construction of the statutes 'should not be extended beyond the correction of the evils and the attainment of the permissible social objects which, it may be assumed, were the inducing reasons for its enactment.'"

17. See note 6 *supra*.

18. 252 Minn. 457, 90 N.W.2d 533 (1958). In the *Phelps* case, a pair of married couples, the Bensons and the Higginses, went on a pleasure trip in the Higgins' automobile, the parties sharing expenses under a prearranged agreement. The accident occurred while Mr. Benson was driving the automobile in South Dakota.

19. S.D. Code § 44.0362 (1939):

No person transported by the owner or operator of a motor vehicle as his guest without compensation for such transportation shall have cause of action for damages against such owner or operator for injury death, or loss, in case of accident, unless such accident shall have been caused by the willful and wanton misconduct of the owner or operator of such motor vehicle, and unless such willful and wanton misconduct contributed to the injury, death, or loss for which the action is brought; and no person so transported shall have such cause of action if he has willfully or by want or ordinary care brought the injury upon himself.

20. *Phelps v. Benson*, 252 Minn. 457, 90 N.W.2d 533, 541 (1958).

This rejection was based in part on the fact that South Dakota does not follow a policy of strict construction of statutes in derogation of the common law. See S.D. Code § 65.0202(1) (1939); and *Scotvold v. Scotvold*, 68 S.D. 53, 298 N.W. 266 (1941).

The other basis for such rejection was "the purposes for which the statute was enacted as shown by *Naudzius v. Lahr*, 253 Mich. 216, 234 N.W. 581, 74 A.L.R. 1189 [(1931)], which interpretation was adopted by South Dakota when it enacted its guest law. . . ." *Phelps v. Benson*, 252 Minn. 457, 90 N.W.2d 533, 541 (1958).

21. The court disposed of the issue of the status of the owner's wife by relying on a South Dakota case, *Scotvold v. Scotvold*, 68 S.D. 53, 298 N.W. 266 (1941), which

question then became: Had there been sufficient compensation moving from the owner to the operator to take the owner outside the scope of the guest statute?²² The court concluded there had not, holding that the mere sharing of expenses of a pleasure trip is not such compensation as will remove guest status from the owner.²³

In *Ford v. Etheridge*,²⁴ decedent and defendant went on a fishing trip to a lake in decedent's automobile, defendant driving. On the way to the lake, both men drank several cans of beer; upon his arrival, decedent drank a half-pint of whiskey and became violently ill. Hence, the two decided to return home, defendant driving and decedent riding on the front seat. Defendant drove the automobile off the highway, and decedent received injuries from which he died. Decedent's representative brought this wrongful death action, alleging that the ordinary negligence of defendant was the proximate cause of her husband's death. Defendant's answer raised, *inter alia*, the defense of the guest statute.²⁵ The trial court held both decedent and defendant negligent and the

held that a wife riding with her husband who owns the automobile, is his guest within the meaning of the South Dakota guest statute.

The court's determination that the owner could be a guest proceeded on the theory that neither couple went on the trip as a result of the invitation of the other, that the trip was planned for the mutual benefit and pleasure of both couples, and apparently that the host-guest relationship was a shifting one, *i.e.*, whoever happened to be driving at any particular time was the host and the others were the guests.

The court quoted from *Eilts v. Bendt*, 162 Neb. 538, 76 N.W.2d 623, 629 (1956), in which case the Nebraska court defined a guest within the meaning of the Nebraska guest statute, Neb. Rev. Stat. § 39-740 (1943), as follows: "A person riding in a motor vehicle is a guest if his carriage confers only a benefit upon himself and no benefit upon the owner or operator except such as incidental to hospitality, social relations, companionship, or the like, as a mere gratuity." *Phelps v. Benson*, 252 Minn. 457, 90 N.W.2d 533, 542 (1958).

22. 90 N.W.2d at 543.

23. *Phelps v. Benson*, 252 Minn. 457, 90 N.W.2d 533, 543 (1958), quoting from *Scotvold v. Scotvold*, 68 S.D. 53, 298 N.W. 266, 271 (1941):

'[W]e entertain the view that no basis exists for differentiating such a guest from the true guest the Legislature had in mind unless the benefit he is to bestow on the owner or operator is sufficiently real, tangible and substantial to serve as the inducing cause of the transportation, and to operate to completely overshadow any considerations of mere hospitality growing out of friendship or relationship.'

The court in *Phelps* did not consider an argument that the owner renders compensation to the operator by reason of furnishing his automobile and thereby contributing to the cost of the transportation the equivalent of the value of the automobile. Such argument was a Pennsylvania court's basis for holding in an earlier case, *Lorch v. Eglin*, 369 Pa. 314, 85 A.2d 841 (1952), that the owner could not be a guest in his automobile under the Virginia guest statute, Va. Code Ann. § 8-646.1 (1950):

24. 377 P.2d 386 (N.M. 1962).

25. Record, pp. 8-10, 19, 27, *Ford v. Etheridge*, 377 P.2d 386 (N.M. 1962).

guest statute inapplicable.²⁶ On appeal to the Supreme Court of New Mexico, *held*, Reversed and Remanded with instructions to set aside judgment for defendant, determine plaintiff's damages and enter judgment accordingly. Decedent, as a matter of law, had not been contributorily negligent.²⁷ The question of the applicability of the guest statute was neither raised, nor questioned, on appeal.

The New Mexico guest statute is identical to the Connecticut statute,²⁸ and the New Mexico Supreme Court has said it presumes the New Mexico legislature adopted the prior construction and interpretation of the Connecticut statute by the highest court of Connecticut.²⁹ The New Mexico courts have followed a policy of strict construction of statutes in derogation of the common law.³⁰ The facts of *Ford* are similar to those of *Gledhill*.³¹ Although *Gledhill* was decided after the enactment of the New Mexico guest statute,³² the Connecticut authorities relied upon by the court in *Gledhill* were cases decided prior to enactment. This fact, plus the policy of strict construction, could furnish the New Mexico Supreme Court impetus to follow *Gledhill*.

Other considerations, however, suggest that decedent in *Ford* was a guest in his automobile. The policy reasons commonly expressed by the courts for the enactment of guest statutes are (1) the belief that it is unfair for a guest to seek damages from one who has benefited or accommodated him, and (2) to furnish an antidote to fraudulent claims against insurance companies conceived by a collusive host and his guest.³³ But the courts have not yet made the

26. Record, p. 136. The basis for such finding apparently was the assumption by the trial judge that decedent could not have been a guest in his automobile, because one of plaintiff's requested conclusions of law was "decedent was not a guest in his own motor vehicle at any time pertinent hereto." Record, pp. 22-23.

The trial judge also found that decedent did not assume the risk. *Ford v. Etheridge*, 377 P.2d 386, 389 (N.M. 1962).

27. *Id.* at 389-90.

28. See notes 9 and 11 *supra*.

29. *Smith v. Meadows*, 56 N.M. 242, 250, 242 P.2d 1006, 1011 (1952).

30. See *Hinds v. Velasquez*, 63 N.M. 282, 317 P.2d 899 (1957); *El Paso Cattle Loan Co. v. Hunt*, 30 N.M. 157, 228 Pac. 888 (1924).

31. See note 12 *supra*.

32. The New Mexico guest statute was enacted in 1935, and *Gledhill* was decided in 1936.

33. *Naphthali v. Lafazan*, 8 App.Div.2d 22, 186 N.Y.S.2d 1010, 1014 (Sup.Ct. 1959), *aff'd*, 171 N.E.2d 462 (1960). See *Naudzius v. Lahr*, 253 Mich. 216, 234 N.W. 581, 584, (1931):

In many, probably most, of the cases between relatives or friends the real defendant is an insurance company. Ordinary negligence is not hard to prove if guest and host co-operate to that end. It is conceivable that such actions are not always unattended by collusion, perjury, and consequent fraud upon the court. While we may accept the contention that paid insurers are not objects of special consideration by the Legislature, it is inadmissible for the court to

determination of precisely who is to be protected by the guest statutes—the owner or the operator.

If an overriding policy reason for the guest statutes is the protection of insurance companies, then there is compelling reason for holding that the owner can be a guest in his automobile if the owner's insurance company may be called upon to pay for the operator's injurious driving. If the coverage of the insurance policy extended only to the owner's injurious driving, then the owner should not have guest status; in such a case the liability of the non-owning operator for ordinary negligence would in no way prejudice the insurance company. This is not the general situation, however, because most automobile liability insurance policies extend coverage to whoever is driving, under the so-called "omnibus" clause.³⁴ Therefore, the question of ownership, insofar as it denies guest status, should become unimportant as far as the liability of the insurance company is concerned once the tortious driving conduct of the operator has been established.

A Texas court,³⁵ construing the Texas guest statute,³⁶ which is similar to the New Mexico guest statute, defined "guest" as one who receives hospitality and gives no tangible benefit which serves as the inducing cause of his trans-

consider a law from the viewpoint that they are not entitled to a proper trial and honest determination of liability in a lawsuit. Nor are insurance companies alone interested in the question. The results of verdicts are mirrored in insurance rates, and the law provides a possible reason in the purse of the motor owning public, most of whom carry liability insurance. It is not inconceivable that some passengers who solicit rides may manufacture claims for liability. . . . The law also has social features. It is well known that drivers hesitate to take neighbors for a ride or to assist on his way a weary traveler because of potential liability for injuries.

34. The National Standard Policy contains the following provision: "*Definition of Insured.* With respect to the insurance for bodily injury liability and for property damage liability the unqualified word 'insured' includes the named insured and also includes any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured or with his permission." See Gregory & Kalven, *Cases and Materials on Torts* 559 (1959).

It was formerly required in New Mexico under the motor vehicle financial responsibility laws, that the motor vehicle liability insurance policy "insure as insured the person named therein and any other person using or responsible for the use of any such motor vehicle with the consent, express or implied of such named insured." N.M. Laws 1947, ch. 201, § 17, repealed by N.M. Laws 1955, ch. 182, § 504.

Under present law no insurance policy may be issued in New Mexico until its form has been approved by the superintendent of insurance. N.M. Stat. Ann. § 58-8-8.1 (1953). And it seems unlikely, in view of the National Standard Policy and the prior New Mexico law, that the superintendent of the insurance would permit the issuance of a motor vehicle liability policy without the inclusion of an omnibus clause.

35. *McCarty v. Moss*, 225 S.W.2d 883 (Tex.Civ.App. 1949, *error ref'd.*).

36. Tex. Rev. Civ. Stat. Ann. art. 6701(b), (1960).

portation.³⁷ And it has been suggested that under such a definition the non-driving owner "can thus be thought of as a temporary guest of the driver, between whom there has passed no tangible benefit other than a mutual exchange of hospitality. . . ."³⁸ Such an interpretation could well be used in construing the New Mexico guest statute. Yet even without this interpretation, the Texas decision could be used in New Mexico as authority for giving the owner guest status.

The decedent in *Ford* needed medical attention but was unable to drive his automobile. Defendant was not under any legal obligation as to decedent's welfare. He voluntarily transported decedent in decedent's automobile solely for decedent's benefit. There were other fishermen at the lake with whom defendant could have ridden home. It was decedent, not defendant, who received hospitality and gave no tangible benefit which would serve as the inducing cause of his transportation.

Although a conclusion that decedent had guest status would be contrary to Section 490 of the Restatement of Torts,³⁹ this would not present a problem in New Mexico. That section "deals only with the effect of the contributory negligence of the carrier or host,"⁴⁰ and in New Mexico the defense of contributory negligence is not available to the driver in an action brought by his "guest" under the guest statute.⁴¹

Had the problem been presented on cross-appeal by defendant, the supreme court should have held that decedent was a guest in his automobile. The New

37. *McCarty v. Moss*, 225 S.W.2d 883, 887 (Tex.Civ.App. 1949). "As used in the statute the term 'guest' has its general and common understanding, and means that one is a guest who is the recipient of the voluntary hospitality of the owner or operator of the automobile." *Ibid.*, quoting from *Lind v. Nored*, 133 S.W.2d 234, 237 (Tex.Civ. App. 1939, *error ref'd.*).

38. Note, 38 Texas L. Rev. 110, 112 (1959-60).

39. Restatement, Torts § 490, comment *a* (1934):

Distinction between "passenger" and "guest." The phrase 'passenger in a vehicle' is used to denote the fact that the plaintiff is one who is being carried by another for hire. The word 'guest' is used to denote one whom the *owner or possessor* of a motor car or other vehicle invites or permits to ride with him as a gratuity, that is, without any financial return except such slight benefits as it is customary to extend as part of the ordinary courtesies of the road. (Emphasis added.)

This Section was used in *Parker v. Leavitt*, 201 Va. 919, 114 S.E.2d 732 (1960), to deny the owner guest status under the Virginia guest statute, Va. Code Ann. § 8-646.1 (1950).

40. Restatement, Torts § 490, comment *c* (1934).

41. "Contributory negligence will be denied as a defense where the act of negligence of a defendant shows a reckless, wilful and wanton disregard of human life and the consequences of his acts." *Hall v. Stiles*, 57 N.M. 281, 287, 258 P.2d 386, 390 (1953). See also *Gray v. Esslinger*, 46 N.M. 421, 130 P.2d 24 (1942), *rehearing denied*, 46 N.M. 492, 131 P.2d 981 (1942).

Assumption of risk is a proper defense under the guest statute. See *State Highway Comm'n v. Davis*, 64 N.M. 399, 329 P.2d 422 (1958); *Berkstresser v. Voight*, 63 N.M. 470, 321 P.2d 1115 (1958).

Mexico guest statute does not expressly exclude the owner from the scope of guest status, and the supreme court has indicated that the owner may have guest status.⁴² A policy reason for the guest statute—to discourage collusion among parties to automobile accidents in order to collect insurance—and the near universal presence of the “omnibus” clause in automobile liability insurance policies weaken the argument for strict construction of the New Mexico guest statute.⁴³ And the other policy reason—the belief it is unfair for a guest to seek damages from one who has benefited or accommodated him—destroys the argument for strict construction under the facts in *Ford*.

Although the New Mexico Supreme Court has said it presumes that the New Mexico legislature adopted Connecticut's interpretation of the Connecticut guest statute,⁴⁴ the court did not follow Connecticut's interpretation of the state of mind required to evidence a “heedless” or “reckless” disregard of the rights of others under the guest statute.⁴⁵ This fact and the more modern interpretation of the guest statutes, as represented by the *Phelps* case,⁴⁶ would have furnished the supreme court reason to refuse to follow the *Gledhill* case,⁴⁷ particularly in view of the absence of any “payment” moving from decedent to defendant. Had the problem been presented on cross-appeal, and had the court held that decedent was a guest, then the trial court's judgment for defendant might well have been affirmed.⁴⁸

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42. *Smith v. Meadows*, 56 N.M. 242, 249, 242 P.2d 1006, 1011 (1952): “The said guest statute was enacted for the very purpose of preventing recovery by a guest of damages resulting from the negligence of a *driver* and allows recovery only in case the *driver's* acts were intentional or in heedless and reckless disregard of the rights of others.” (Emphasis added.)

43. The general rule of strict construction, *i.e.*, statutes in derogation of the common law should be strictly construed, is too general. The rule should be qualified to read: Statutes in derogation of the common law should be strictly construed *only when the policy reasons for the enactment of such statute so indicate*.

44. *Smith v. Meadows*, 56 N.M. 242, 242 P.2d 1006 (1952).

45. In *Amaro v. Moss*, 65 N.M. 373, 376, 337 P.2d 948, 950-51 (1959), the supreme court said: “The state of mind required to be shown under our guest statute is not different from that required to secure a conviction for involuntary manslaughter where a human is killed by an automobile.”

Noting that this state of mind had never been required by the Connecticut courts to evidence a heedless or reckless disregard of the rights of others under the Connecticut guest statute, Justice Carmody said in his dissenting opinion: “The effect of the instant decision goes a great deal further than we have ever gone before, and considerably further than I believe we should. . . . The majority opinion is a substantial departure from our prior rulings [based on Connecticut decisions]. . . .” *Id.* at 378, 337 P.2d at 952 (dissenting opinion).

46. *Phelps v. Benson*, 252 Minn. 457, 90 N.W.2d 533 (1958).

47. *Gledhill v. Connecticut Co.*, 121 Conn. 102, 183 Atl. 379 (1936).

48. The reasons for affirmance are: (1) there is no evidence in the trial record that defendant's conduct was intentional or wanton, (2) the supreme court did not disturb the trial court's finding of no assumption of risk, and (3) contributory negligence is no defense to an action brought under the New Mexico guest statute. See notes 26 and 41 *supra*.