gress' intention, the Ninth Circuit and the other courts have not been offered a choice. Their only recourse is to recognize the route the Supreme Court has chosen to pursue in *Schwinn*.

It is true that much has been written on the merits of the *Schwinn* rationale[80]—Justice Fortas called it "the ancient rule against restraints on alienation"[81]—including some commentaries which have appealed to the Court to reevaluate its decision.[82] Critical as one may be, it is not the role of an intermediate appellate court to make policy decisions when those decisions have already been made by the Supreme Court.[83] The courts cannot allow criticisms of *Schwinn* to distract them from their duty.[84] For until the categoric "per se" approach of *Schwinn* is modified by the Supreme Court, the appellate courts have a rule to follow—when one parts with title, risk and dominion, one must also part with control.[85]

KATHLEEN S. BEAN

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80. *See* Handler, *Twenty-Fifth Annual Antitrust Review*, 73 COLUM. L. REV. 415, 458-59 (1973); Handler, *The Twentieth Annual Antitrust Review—1967*, 53 V.L. REV. 1667, 1680-86 (1967); McLaren, *Marketing Limitations on Independent Distributors and Dealers—Prices, Territories, Customers, and Handling of Competitive Products*, 13 ANTITRUST BULL. 161, 168 (1968); Pollack, *Alternative Distribution Methods After Schwinn*, 63 NW. L. REV. 595 (1968); Sadd, *Territorial and Customer Restrictions After Sealy and Schwinn*, 38 U. CIN. L. REV. 249 (1969); Note, *Restrictive Distribution Arrangements After the Schwinn Case*, 53 CORNELL L. REV. 515 (1967); Note, *Territorial and Customer Restrictions: A Trend Toward a Broader Rule of Reason?*, 40 GEO. WASH. L. REV. 123 (1971); Note, *Territorial Restrictions and Per Se Rules—A Re-evaluation of the Schwinn and Sealy Doctrines*, 70 MICH. L. REV. 616 (1972); Comment, *The Impact of the Schwinn Case on Territorial Restrictions*, 46 TEXAS L. REV. 497, 511 (1968).

81. United States v. Arnold, Schwinn & Co., 388 U.S. 365, 380 (1967).

82. *See* Robinson, *supra* note 22, at 279; COLUM. Note, *supra* note 13, at 523.

83. *See* Breakefield v. District of Columbia, 442 F.2d 1227 (D.C.C. 1970), *cert. denied*, 401 U.S. 909 (1971).

84. The Ninth Circuit recognized this in its opinion. "If we thought the opinion of Mr. Justice Fortas in *Schwinn* to control our present decision, our duty would compel us to apply *Schwinn*. And this we would do, despite the fact that the opinion . . . has frequently been criticized. . . ." GTE Sylvania Inc. v. Continental T.V., Inc., 537 F.2d 980, 988 n.13 (9th Cir. 1976).

85. United States v. Arnold, Schwinn & Co., 388 U.S. 365, 382 (1967).

CONTRACTS—IN APPROPRIATE CASES, THERE MAY BE RECOVERY FOR MENTAL DISTRESS, ABSENT PHYSICAL TRAUMA, ARISING OUT OF A BREACH OF CONTRACT TO PERFORM FUNERAL SERVICES.—*Meyer v. Nottger* (Iowa 1976).

Plaintiff Meyer's father and stepmother were killed in an automobile accident. Defendant Nottger, a funeral director, was engaged to handle the funeral arrangements. Meyer told Nottger that he wished his father's funeral to be separate from that of his stepmother's. However, Nottger falsely stated that Meyer had no choice in the matter and Meyer was thereby forced to agree to a double funeral. Nottger then told Meyer that he would have to choose an expensive sealer casket because of the harsh and unpleasant odors from the body, when in fact there were no such odors. Meyer also expressed his wish to see his father's body, but Nottger advised Meyer not to do so because of the offensive odors and because the body was in a gruesome condition. Meyer returned the next day and demanded to view the body. Nottger acquiesced in the matter only after Meyer's attorney advised him to do so. Upon viewing the body, Meyer saw that it was in good condition and noticed that there were no offensive odors. After the funeral service, Nottger dismissed the pallbearers, contrary to Meyer's wishes. As the hearse was about to start toward the grave-site, Meyer became detained and told Nottger to delay the procession until he returned. The procession, in fact, started without him, and Meyer suffered a heart attack as the probable consequence of his effort to catch up to it. As a result of this series of events, Meyer brought an action against Nottger, alleging causes of action in both tort[1] and contract. In the division sounding in contract, Meyer contended that Nottger breached the contract between the parties in failing to perform the duties incident to the funeral service in a workmanlike manner. In both counts, Meyer asked for damages for his mental distress and the heart attack he suffered as a result thereof. The trial court granted summary judgment for the defendant funeral director, holding, *inter alia*, that the Supreme Court of Iowa would not recognize a cause of action for mental anguish, unaccompanied by physical trauma, caused by a breach of contract to perform funeral services.[2]

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1. Under his tort cause of action, Meyer alleged that Nottger's conduct constituted the commission of the tort of intentional infliction of severe emotional distress. It should be noted at this juncture that this case note will not attempt to discuss at length the court's reasoning and holding as it relates to the intentional infliction of severe emotional distress issue. However, it bears mentioning that the *Meyer* court did determine that there was sufficient evidence in the record from which a reasonable trier of fact could conclude that there was intentional infliction of severe emotional distress in this case, based upon the Iowa court's previous holding in Amsden v. Grinnell Mutual Reinsurance Co., 203 N.W.2d 252 (Iowa 1972). Meyer v. Nottger, 241 N.W.2d 911, 918 (Iowa 1976).

2. However, the trial court did acknowledge that plaintiff's petition "appeared to

Unanimously, the Supreme Court of Iowa *held*, reversed. In appropriate cases, there may be recovery for mental distress, absent physical trauma, arising out of a breach of contract to perform funeral services. *Meyer v. Nottger*, 241 N.W. 2d 911 (Iowa 1976).

In *Meyer*, the Iowa court was faced with a case of first impression involving the recovery of damages for mental distress arising out of a breach of contract to perform funeral services. In determining that such a cause of action in fact exists in Iowa, the supreme court carefully announced that it would be operative only in "appropriate circumstances." The decision as to what constitutes those circumstances led the *Meyer* court to a number of considerations.

At the outset, a brief examination of the background concerning recovery for mental distress may he helpful in placing the *Meyer* holding in its proper setting. Although recovery for physical pain and suffering has long been allowed, courts have traditionally refused to impose liability for the infliction of mental distress.[3] Generally speaking, recovery of damages for mental distress has been permitted only in a limited number of somewhat overlapping situations.[4] First, liability for mental distress has been found to exist where it is the result of the commission of an independent tort,[5] such as assault[6] or false imprisonment.[7] Second, mental distress has been compensated in tort and contract when it results in or is accompanied by a physical impact or injury,[8] a concept generally known as the "impact rule."[9] Third, damages for mental distress may be recovered either in an action arising out of contract or tort, where there exists what the courts have termed a "special relationship" between the parites.[10] Fourth, liability has been imposed even in the absence of a showing of a special relationship or physical impact or injury if the mental anguish was intentionally inflicted.[11] Thus, the *Meyer* court was faced with a judicial framework which had been traditionally very conservative in awarding damages for mental distress.

In its discussion of Meyer's contract cause of action, the Iowa Supreme Court early indicated that recovery for mental distress can be had, and has been

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state a cause of action in those states which had adopted special rules pertaining to the contractual relationships between morticians and relatives of decedents." *Id.* at 919-20.

3. Comment, *Negligence—Infliction of Emotional Harm—A Suggested Analysis*, 54 IOWA L. REV. 914, 915 (1969) [hereinafter cited as IOWA Comment].

4. *Id.* at 916.

5. *Id.*

6. Ransom v. McDermott, 215 Iowa 594, 246 N.W. 266 (1933); Taylor v. Williamson, 197 Iowa 88, 196 N.W. 713 (1924); Fleming v. Loughren, 139 Iowa 517, 115 N.W. 506 (1908).

7. Yount v. Carney, 91 Iowa 559, 60 N.W. 114 (1894).

8. W. PROSSER, THE LAW OF TORTS § 54 (4th ed. 1971) [hereinafter cited as PROSSER].

9. *Id.*

10. *See generally* Annot., 61 A.L.R.3d 922, 923 (1975).

11. IOWA Comment, *supra* note 3, at 916. *See, e.g.*, Carey v. Lima, Salmon & Tully Mortuary, 168 Cal. App. 2d 42, 335 P.2d 181 (1959) (funeral director and bereaved relative); Cowan v. Western Union Tel. Co., 122 Iowa 379, 98 N.W. 281 (1904) (telegraph company and telegraph receiver).

so awarded in Iowa, where it is the result of a breach of contract where that breach also constituted the commission of a tort.[12] In so noting, the court relied upon the cases of *Mentzer v. Western Union Telegraph Co.*[13] and *Cowan v. Western Union Telegraph Co.*[14] In *Mentzer*, a telegram was sent to the plaintiff announcing the time of his mother's funeral. The telegram was negligently delivered late; the plaintiff missed his mother's funeral and thereby suffered mental anguish. There, the Iowa court allowed recovery based on the reasoning that in certain relations, duties are imposed by law, and the failure to perform such duties is regarded as a tort although the relations themselves may be formed by a contract.[15] *Mentzer* emphasized the special relationship between the parties giving rise to a duty and stated that damages for mental distress can be recovered when the telegraph company is advised of the character of the message.[16] *Cowan*, another Iowa case involving a similar fact pattern, allowed recovery for mental distress arising from the negligent transmission of a telegraph message, stating that a telegraph company is engaged by the public and is to be considered and treated, with some limitations, as a common carrier.[17]

Although the *Meyer* court cited these cases as examples of breach of contract actions also constituting torts, it is crucial to note that recovery in these cases was actually based on the commission of a negligent tort. While in each of these cases a contract for the delivery of the telegram existed between the telegraph company and some other party, that other contracting party was not the plaintiff—the non-contracting plaintiff in these cases was at best only a third-party beneficiary of the contract calling for delivery of the telegram. In *Mentzer* and its progeny, recovery was predicated on the rule that telegraph companies are bound by certain duties imposed by law, independent of contract.[18] In these cases, the action could have been brought *ex contractu* or *ex delicto*.[19] Privity of contract was not a factor in allowing recovery, as the duty arose by law, not solely by virtue of the existing contract. Therefore, these cases appear to be within the rule which allows recovery of damages for mental distress where some special relationship exists between the parties,[20] such special relationship arising by law in view of the contract to which the receiver of the telegram was a third-party beneficiary. On the other hand, in discussing the division on contract in the instant case, the *Meyer* court was faced with a situation where plaintiff and defendant were indeed in privity of contract. The court did not rely on the special relationship tort rationale followed in *Mentzer*. Instead, its decision was predicated on the existence of a noncommercial contract between the funeral director and the bereaved relative.

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12. Meyer v. Nottger, 241 N.W.2d 911, 920 (Iowa 1976).
13. 93 Iowa 752, 62 N.W. 1 (1895).
14. 122 Iowa 379, 98 N.W. 281 (1904).
15. Mentzer v. Western Union Tel. Co., 93 Iowa 752, 758-59, 62 N.W. 1, 3 (1895).
16. *Id.* at 755, 62 N.W. at 2.
17. Cowan v. Western Union Tel. Co., 122 Iowa 379, 384, 98 N.W. 281, 283 (1904).
18. A. CORBIN, CONTRACTS § 1076 (1964) [hereinafter cited as CORBIN].
19. Mentzer v. Western Union Tel. Co., 93 Iowa 752, 758, 62 N.W. 1, 3 (1895).
20. PROSSER, *supra* note 8.

In examining this division purely in terms of contract, then, the *Meyer* court discussed the type of damages generally recoverable upon breach of contract. The court, citing *Hadley v. Baxendale*,[21] noted that in an action based upon a breach of contract, damages are limited to those which are foreseeable or within the contemplation of the parties at the time the contract was made.[22] Justification for the denial of damages for mental distress arising out of a breach of contract has often been couched in terms of such damages being too remote;[23] that such damages could not have been within the contemplation of the parties; or that compensation for any pecuniary loss is adequate.[24] Thus, in actions for breach of contract, damages are generally limited to compensation for pecuniary loss.[25] However, the *Meyer* court distinguished between two classes of contracts: commercial and noncommercial, each giving rise to different types of damages which are recoverable upon breach.[26] A noncommercial contract is of "such a character that the natural and probable consequence of the breach will be to inflict mental anguish on the person to whom performance is due."[27] In such contracts the award of damages for mental distress is commonplace.[28] Conversely, a commercial contract would have no such natural consequence and thus, damages for mental distress would not be awardable.[29] Therefore, it became necessary for the court in *Meyer* to make a determination as to whether a contract for the performance of funeral services constitutes a noncommercial contract.

In deciding this question, the court analyzed *Stewart v. Rudner*,[30] a Michigan case which had already dealt with this issue. There, the Supreme Court of Michigan allowed recovery of damages for mental distress arising out of a physician's breach of a contract to perform a Caesarean section on his patient.[31] The Supreme Court of Iowa in *Meyer* agreed with the *Stewart* court when it stated that noncommercial contracts are those concerned with "rights we cherish, dignities we respect, and emotions recognized as both sacred and personal."[32] The court in *Stewart* found that the breach of a contract concerned with life, death, mental concern, or solicitude would naturally give rise to mental distress

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21. 9 Ex. 34, 156 Eng. Rep. 145 (1854).
22. Meyer v. Nottger, 241 N.W.2d 911, 920 (Iowa 1976).
23. Smith v. Sanborn State Bank, 147 Iowa 640, 643, 126 N.W. 779, 780 (1910) (mental distress damages too remote in contract for payment of money).
24. Mentzer v. Western Union Tel. Co., 93 Iowa 752, 761, 62 N.W. 1, 4 (1895).
25. CORBIN, *supra* note 18.
26. Meyer v. Nottger, 241 N.W.2d 911, 920 (Iowa 1976).
27. *Id.* at 920, *quoting* 25 C.J.S. *Damages* § 69 (1966).
28. Stewart v. Rudner, 349 Mich. 459, 467, 84 N.W.2d 816, 823 (1957).
29. In Lamm v. Shingleton, the court noted that most contracts are commercial in nature in that they relate to property or services rendered in connection with business or professional organizations, and that a breach of such ordinary contract will not result in damages for mental distress. Lamm v. Shingleton, 231 N.C. 10, 13, 55 S.E.2d 810, 813 (1949).
30. 349 Mich. 459, 84 N.W.2d 816 (1957).
31. Stewart v. Rudner, 349 Mich. 459, 84 N.W.2d 816 (1957).
32. Meyer v. Nottger, 241 N.W.2d 911, 920 (Iowa 1976), *quoting* Stewart v. Rudner, 349 Mich. 459, 467, 84 N.W.2d 816, 823 (1957).

as the inevitable and foreseeable result and so may be compensated.[33] The *Meyer* court agreed with those principles enunciated in *Stewart* and announced that they were equally applicable to contracts for the performance of professional funeral services.[34] Thus, the court allowed damages for mental distress because such damages are a foreseeable result of the breach of a contract for funeral services.

Generally, in discerning whether a contract is commercial or noncommercial, courts look to two factors: the subject matter of the contract and the pecuniary interest involved.[35] The subject matter of the agreement is the primary consideration in determining whether the contract is commercial or noncommercial. While the subject matter of commercial contracts cannot be defined with any amount of certainty, various courts have attempted to describe them as being concerned with trade and commerce,[36] property,[37] business,[38] and money.[39] Conversely, noncommercial contracts have been described as involving mental concern or solicitude,[40] the sensibilities[41] and affections[42] of the parties, and life and death.[43]

The pecuniary interest in the contract is generally considered the secondary factor in determining whether the contract is of a commercial or noncommercial nature. In *Lamm v. Shingleton*,[44] a North Carolina case, the court stated that a contract for a funeral service is personal, a breach of which would cause no substantial pecuniary loss.[45] Thus, the *Lamm* court seemed to be intimating that if the pecuniary loss was great, the inference could be drawn that the parties contracted for monetary benefit rather than for peace of mind. Therefore, the contract would have been a commercial contract for which recovery would have been denied. At least one court has stated that in contracts where pecuniary interests are paramount, the breach may cause worry and anxiety, but recovery must be denied because it could not have been contemplated by the parties as a natural and probable result of the breach.[46] In any event, where the primary consideration for entering into the contract is for profit or pecuniary aggrandizement, a breach thereof will not result in recovery for mental distress.[47]

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33. Stewart v. Rudner, 349 Mich. 459, 468, 84 N.W.2d 816, 824 (1957).
34. Meyer v. Nottger, 241 N.W.2d 911, 920 (Iowa 1976).
35. *See* Mentzer v. Western Union Tel. Co., 93 Iowa 752, 761-62, 62 N.W. 1, 4 (1895); Stewart v. Rudner, 349 Mich. 459, 84 N.W.2d 816 (1957); Lamm v. Shingleton, 231 N.C. 10, 13, 55 S.E.2d 810, 813 (1949).
36. *See* Stewart v. Rudner, 349 Mich. 459, 84 N.W.2d 816 (1957).
37. Mentzer v. Western Union Tel. Co., 93 Iowa 752, 62 N.W. 1 (1895).
38. *See* Lamm v. Shingleton, 231 N.C. 10, 55 S.E.2d 810 (1949).
39. *See* Smith v. Sanborn State Bank, 147 Iowa 640, 126 N.W. 779 (1910). *But see* Westesen v. Olathe State Bank, 78 Colo. 217, 240 P. 689 (1925).
40. Lamm v. Shingleton, 231 N.C. 10, 55 S.E.2d 810 (1949).
41. *Id.*
42. Mentzer v. Western Union Tel. Co., 93 Iowa 752, 62 N.W. 1 (1895).
43. Stewart v. Rudner, 349 Mich. 459, 84 N.W.2d 816 (1957).
44. 231 N.C. 10, 55 S.E.2d 810 (1949).
45. Lamm v. Shingleton, 231 N.C. 10, 10-13, 55 S.E.2d 810, 813-14 (1949).
46. Stewart v. Rudner, 349 Mich. 459, 466, 84 N.W.2d 816, 823 (1957).
47. *Id.* at 467, 84 N.W.2d at 824.

After discussing the type of contract involved, the Iowa Supreme Court next considered the actual breach of contract in *Meyer*. In so doing, the court relied to a great extent on the *Lamm* case. In *Lamm*, suit was brought by a widow against the owners of a funeral home for the breach of a contract to properly conduct the funeral and inter the body of her deceased husband. Plaintiff claimed that the vault supplied by the defendants was not properly sealed, allowing mud and water to seep into the vault, which in turned caused her to suffer severe mental anguish. The court in *Lamm* stated that where the defendants held themselves out to be specially qualified to perform the duties of an undertaker, they impliedly covenanted to perform the services contemplated by the contract in a good and workmanlike manner.[48] The Iowa Supreme Court in *Meyer* likewise found that there was sufficient material evidence from which a trier of fact could find a breach by Nottger of the implied promise to exercise proper skill, and perform in a workmanlike manner.[49]

Meyer poses three principal questions involving the scope of the Iowa Supreme Court's ruling. The first and most important question is, how applicable is the holding and reasoning of *Meyer* to other contract cases? The holding is restricted to the finding that a funeral service contract is a noncommercial contract.[50] However, although the holding is narrow, the reasoning is broad. The court reasoned that a noncommercial contract is of such a character as to give notice to the contracting parties that mental distress will foreseeably and naturally flow from the breach.[51] Applying this reasoning, it is possible to analogize to other situations where a noncommercial contract could be found. That the Iowa Supreme Court is perhaps willing to recognize other kinds of noncommercial contracts is evidenced by the fact that the court relied on the *Stewart*[52] case, in which a noncommercial contract was found to exist between a physician and patient.[53]

Thus, the reasoning in *Meyer* could easily be cited as authority for allowing the recovery of damages for mental distress arising out of the breach of any kind of noncommercial contract, without any physical impact or special relationship. The reasoning behind allowing recovery for mental distress damages arising out of a noncommercial contract has a pronounced effect on contract law. The finding that a noncommercial contract exists in any given case thereby bypasses the requirement that there be a special relationship or physical impact. These requirements, formerly indispensible before *Meyer*, are now only necessary in commercial contract cases or in tort cases.

The second question is, what does *Meyer* do to the viability of the impact rule in Iowa? The holding in *Meyer* states in no uncertain terms that the impact

48. Lamm v. Shingleton, 231 N.C. 10, 13-14, 55 S.E.2d 810, 813-14 (1949).
49. Meyer v. Nottger, 241 N.W.2d 911, 921 (Iowa 1976).
50. *Id.*
51. *Id.* at 920.
52. Stewart v. Rudner, 349 Mich. 459, 84 N.W.2d 816 (1957).
53. Meyer v. Nottger, 241 N.W.2d 911, 920 (Iowa 1976).

requirement is not necessary to recover for mental distress on a breach of contract to perform funeral services. It is suggested, however, that *Meyer* does not advocate a cause of action for the negligent infliction of emotional distress without accompanying physical impact or injury.[54] While *Meyer* may be viewed as a step in that direction, such a cause of action has been oppposed in Iowa[55] as well as in other jurisdictions.[56] Thus, *Meyer* should leave settled the rule in Iowa that there can be no recovery for mental distress resulting from a purely negligent tortious act where there is no special relationship unless there is some accompanying physical injury or impact.

The third question posed by the case at bar is whether it is an expansion of the tort rule which allows recovery for mental distress absent physical injury or impact, where there is a special relationship between the plaintiff and the defendant. As has previously been noted, damages for mental distress are recoverable either in an action sounding in contract or tort, where there exists what the courts have deemed "special relationships" between the parties in the case. Although the *Meyer* court did not specifically assert that a special relationship existed between the funeral director and the bereaved relative *in this case*, it can be argued that given the appropriate circumstances the Iowa court might so conclude. For example, if the funeral director's conduct did not amount to a breach of the contract between the parties and there was no physical trauma involved, the Iowa court might be amenable to recognizing a special relationship between the parties so that the bereaved relative might nevertheless have a valid cause of action in tort. It might even be argued that the Iowa court is embarking on a course of increased sensitivity towards such relationships and would

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54. There is general agreement that in the normal case there can be no recovery of mental distress caused by the negligent acts of the defendant without some physical injury or physical consequences. However, courts have not been uniform in applying this rule. *See generally* Annot., 29 A.L.R.3d 1337 (1970). *Contra, e.g.*, Dillon v. Legg, 68 Cal. 2d 728, 736, 441 P.2d 912, 920, 69 Cal. Rep. 72, 80 (1968); Leong v. Takasaki, 55 Haw. 398, 520 P.2d 758 (1974).

55. Mahoney v. Dankwart, 108 Iowa 321, 79 N.W. 134 (1899), holding that a daughter could not recover for the mental distress suffered at seeing her mother collapse following defendants' negligent blasting.

56. *See generally* PROSSER, *supra* note 8. It should be noted that a number of states have specifically rejected the impact or injury rule and have permitted recovery for negligently inflicted emotional distress. Rodrigues v. State, 52 Haw. 156, 472 P.2d 509 (1970); Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961).

Three reasons have commonly been given for the application of the impact rule. One reason is that the mental distress is too trivial if unaccompanied by any physical injury. This appears to be an antiquated concept in light of the advance of modern psychology and science. A second reason proposed for the application of the impact rule has been to insure against fraudulent claims. This reason likewise fails because fraudulent claims are not likely to be eliminated by application of the impact rule because even the slightest impact or the most attenuated of physical injuries have been found adequate to satisfy the impact rule requirement. A third reason for the application of the impact rule has been that mental distress damages are too difficult to accurately measure. This reason also must fail because courts have recognized that the problem of speculative damages do not present a greater problem in mental distress cases than they do in personal injury cases involving pain and suffering. Also, it would seem that a wholesale rejection of an entire class of claims would not be justified by the possibility that there may be fraudulent assertions in isolated cases. Jarchow v. Transamerica Title Ins. Co., 48 Cal. App. 3d 917, 932-33, 122 Cal. Rptr. 470, 481-82 (Ct. App. 1975).

now be willing to allow compensation for mental distress without physical impact wherever such a relationship could be found as a matter of law.[57] Such relationships might include those of doctor and patient, insurer and insured, real estate salesman and prospective buyer, or perhaps even lawyer and client.

The evolution of compensation for mental distress illustrates the increasing trend toward allowing recovery for such damages upon proper proof of its genuineness.[58] The Iowa Supreme Court followed this trend by recognizing in *Meyer* that the possession of a peaceful mental state is a subject for protection in actions for breach of contract. The existence of a noncommercial contract between the parties provides assurance that the mental distress is real. *Meyer* breaks away from the arbitrary rules which have in the past denied recovery for mental distress and held that in appropriate circumstances, there may be recovery for mental distress, absent physical trauma, arising out of a breach of contract to perform funeral services.[59] It can be forcefully argued that *Meyer* opens the door for a finding of a special relationship between a funeral director and a bereaved relative, and in that sense, the case may be viewed as an expansion of the narrow tort rule which allows recovery for mental distress without physical impact where there is a special relationship between the parties. Finally, it is suggested that while *Meyer* does not abrogate the impact rule as it relates to the negligent infliction of emotional distress, it does present another situation where the rule is inapplicable and thus, *Meyer* can be viewed as a step toward the continuing erosion of that doctrine.

GEORGIANNE M. RILEY

57. For language supporting this proposition *see generally* Brody, *Negligently Inflicted Psychic Injuries: A Return to Reason*, 7 VILL. L. REV. 232 (1962).
58. PROSSER, *supra* note 8; Note, *Torts: Recent Developments in the Law of Nervous Shock: Effect of the Restatement of Torts*, 21 CORNELL L.Q. 166 (1936).
59. Meyer v. Nottger, 241 N.W.2d 911, 921 (Iowa 1976).

ENVIRONMENTAL & ADMINISTRATIVE LAW—PLAN OF THE UNITED STATES FOREST SERVICE TO CONTINUE COMMERCIAL LOGGING OF VIRGIN TIMBER IN MINNESOTA WILDERNESS AREA AND SUPPORTING ENVIRONMENTAL IMPACT STATEMENT HELD TO BE IN COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT.—*Minnesota Public Interest Research Group v. Butz* (8th Cir. 1976).

This litigation involves two claims[1] brought by the Minnesota Public Interest Research Group[2] concerning commercial logging in the Boundary Waters Canoe Area in northeastern Minnesota. In the initial action, the Eighth Circuit Court of Appeals affirmed an order issued by the federal district court temporarily enjoining government and private defendants[3] from commercial logging in Boundary Waters Canoe Areas contiguous with virgin forest.[4] The injunction was issued pending completion of an environmental impact statement by defendant United States Forest Service as required by the National Environmental Policy Act of 1969 (NEPA).[5] The Forest Service subsequently completed the final environmental impact statement. A management plan, containing the final decision of the Forest Service to continue commercial logging of virgin timber in the portal zone of the Boundary Waters Canoe Area, was included within the environmental impact statement. That statement purportedly contained a description of the environmental consequences of continued logging upon the area, as well as support for the final decision of the Forest Service.[6] After the final statement and management plan were published,[7] plaintiffs Minnesota Public Interest Research Group and the Sierra

1. Minnesota Pub. Interest Research Group v. Butz, 358 F. Supp. 584 (D.C. Minn. 1973), *aff'd*, 498 F.2d 1314 (8th Cir. 1974); Minnesota Pub. Interest Research Group v. Butz, 401 F. Supp. 1276 (D.C. Minn. 1975), *rev'd*, 541 F.2d 1292 (8th Cir. 1976) [hereinafter cited as MPIRG v. Butz].

2. Minnesota Public Interest Research Group is a nonprofit Minnesota corporation organized for the purpose of promoting the public interest. In fulfillment of this purpose, the organization provides legal representation in matters of public concern when its Board of Directors and staff feel such representation is necessary. MPIRG v. Butz, 358 F. Supp. 584 (D.C. Minn. 1973).

3. Defendants in this litigation were: Earl V. Butz, individually and as Secretary of Agriculture; John B. McGuire, individually and as Chief, United States Forest Service; Jay Cravens, individually and as Regional Forester; Harold Andersen, individually and as Supervisor, Superior National Forest; Consolidated Papers, Inc.; Northwest Paper Co.; Northern Forest Products, Ltd.; Kainz Logging Co.; Emil Abramson; and Boise Cascade Corp. *Id.* at 597-601.

4. MPIRG v. Butz, 358 F. Supp. 584 (D.C. Minn. 1973), *aff'd*, 498 F.2d 1314 (8th Cir. 1974).

5. 42 U.S.C. §§ 4321-4347 (1970). The action of the Forest Service with regard to currently existing timber sales within the portal zone of the Boundary Waters Canoe Area constituted the major federal action significantly affecting the environment which required the preparation of an environmental impact statement under NEPA. MPIRG v. Butz, 401 F. Supp. 1276, 1286 (D.C. Minn. 1975).

6. MPIRG v. Butz, 541 F.2d 1292 (8th Cir. 1976).

7. 39 Fed. Reg. 25,524 (1974); 39 Fed. Reg. 26,477 (1974).