

No. A08-250

**State of Minnesota
In Supreme Court**

Nancy M. Meyer, as Trustee for the heirs of Margaret Mphosi, deceased,
Joshua Chairu Mphosi, deceased, Lucas Mphosi, injured,
Jehoshophat Mphosi, injured, and Nancy M. Meyer as guardian ad litem
for Lucas Mphosi, injured, Jehoshophat Mphosi, injured,

Appellant,

and

Bunmi Obembe and Christopher Obembe,

Intervenors,

North Dakota Department of Human Services,

Intervenor,

v.

Bibian Nwokedi,

Defendant,

and

Enterprise Rent A Car Co. of Montana/Wyoming, d/b/a
Enterprise Rent a Car of the Dakotas/Nebraska,

Respondent.

**BRIEF OF *AMICUS CURIAE* TRUCK RENTING AND
LEASING ASSOCIATION, INC.**

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STATEMENT OF THE ISSUES, CASE AND FACTS

The Truck Renting and Leasing Association, Inc. (“TRALA”) is satisfied with the statements of the issues, case and facts as set forth in the briefs of Appellant and Respondent Enterprise Rent-A-Car Co. (“ERAC”), and in accordance with Minn. R. Civ. App. Proc. 128.02 subd. 2 declines to offer alternatives to those statements.¹

INTEREST OF THE *AMICUS CURIAE*

The *amicus curiae* is a national trade association whose member companies rent or lease vehicles in interstate commerce.² TRALA, among others, previously joined in a coalition to advocate for the adoption of 49 U.S.C. § 30106, commonly referred to as the “Graves Amendment,” enacted into law by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, § 10208 (Aug. 10, 2005) (“SAFETEA-LU” or the “Federal statute”), and the repeal of vicarious liability statutes in several states and in Canada. Vicarious liability laws adversely affect TRALA’s member companies by substantially raising the costs of doing business nationwide, and limiting the availability of insurance coverage for owners of rented and leased vehicles. Because rented and leased vehicles are routinely driven across state lines, and such vehicles are an integral part of the seamless flow of interstate transportation, TRALA’s members are forced to account for those states, such as

¹ Pursuant to Minn. R. Civ. App. Proc. 129.03, TRALA states that its undersigned counsel solely and exclusively drafted this Brief, and no counsel for any party, intervenor or other *amicus* authored the Brief in whole or in part. TRALA also states that no person other than TRALA made a monetary contribution to the preparation or submission of this Brief.

² A list off TRALA Member Companies is included in the Addendum.

Minnesota, that impose vicarious liability on vehicle lessors. These extra costs are spread throughout the industry, and prior to enactment of the Graves Amendment TRALA estimated that vicarious liability requirements cost vehicle rental and leasing companies upwards of \$100 million annually.

TRALA, headquartered in Alexandria, Virginia, is a voluntary, not-for-profit national trade association founded in 1978 to serve as a unified and focused voice for the truck renting and leasing industry. Its mission is to foster a positive legislative and regulatory climate within which companies engaged in leasing and renting vehicles and trailers and related businesses can compete fairly in the North American marketplace.

TRALA members engage in commercial truck renting and leasing,³ vehicle finance leasing, and consumer truck rental. The membership encompasses the full spectrum of the industry, including major national independent firms such as Ryder System, Penske Truck Leasing, U-Haul, Budget and Enterprise Truck Rental, as well as small and medium-size businesses that generally participate as members of three group systems: Mack Leasing, Volvo Truck Leasing, PacLease, IdealLease and NationalLease. In total, these nearly 500 companies operate more than 4,000 commercial lease and rental locations and more than 18,000 consumer rental locations throughout the United States, Canada and Mexico.⁴

³ The term “renting” is a term of art in the vehicle leasing industry, generally meaning a transaction granting the exclusive use of a vehicle for 30 days or fewer, whereas a lease generally means a transaction granting the exclusive use of a vehicle for more than 30 days. Use of the term herein “lease” includes rentals.

⁴ The TRALA membership also includes more than 100 supplier member companies providing equipment, products, and services to TRALA members.

The truck renting and leasing industry involves a vast network of truck transportation, logistics and related services. In 2003 there were 4,734,964 commercial trucks in classes 3 through 8⁵ registered in the United States. Of that total, some 896,155, or approximately 19 percent, were operated pursuant to some form of lease agreement. Moreover, TRALA members account for upwards of 40 percent of all of the new commercial motor vehicles in classes 3 through 8 purchased each year in the United States.

Truck leasing customers represent virtually every segment of the North American economy.⁶ Almost one-fifth of commercial trucks in the United States are operated under lease agreements. For vehicles operating in interstate commerce, as much as 90 percent of the total number of commercial vehicles may be operating under a lease agreement.

Importantly, truck lessors do not control where a vehicle is operated once the lessee takes possession of the vehicle.⁷ For example, a vehicle may be leased to a

⁵ Classes 3 through 8 include commercial trucks over 10,000 pounds Gross Vehicle Weight ("GVW") to 80,000 pounds GVW and above. Commercial trucks over 10,000 pounds GVW are generally subject to federal and state motor carrier safety regulations. See 49 C.F.R. Part 390.

⁶ Those segments include the following: (1) wholesale/retail, (2) manufacturing, (3) general freight, (4) food processing/distribution, (5) miscellaneous other, (6) services, (7) forestry/lumber/wood products, (8) beverage processing/distribution, (9) agricultural farm, (10) moving and storage, (11) landscaping/horticulture/nursery service, (12) individual owner-operators, (13) petroleum, (14) sanitation/refuse, (15) government miscellaneous, (16) hazardous materials, (17) mining/quarry, (18) construction, (19) vehicle transporters, (20) specialized/heavy hauling, (21) sanitation-refuse combination, (22) general freight hazmat, (23) emergency vehicles, and (24) utility services.

⁷ See, e.g., *Truck Renting and Leasing Ass'n, Inc. v. Comm'r of Revenue*, 433 Mass. 733; 746 N.E.2d 143, 145 (2001) (Lessors "retained ownership of the vehicles and the lessees were granted 'exclusive dominion and control' at all times."); *Marx v. Truck Renting and*

customer in North Dakota by a lessor located in North Dakota, and with no commercial locations outside of that state, but the customer may operate the vehicle in dozens of states throughout the term of the lease without seeking permission from or even notifying the lessor. Further, according to data from the American Trucking Associations,⁸ the average length of a single trip for all trucking operations is 469 miles, indicating these vehicles operate over a wide range of states on a daily basis.

To aid in this freedom of movement, truck lessors generally register their vehicles over 26,000 pounds through the International Registration Plan, which allows the vehicles to be operated in all states without any special permits or additional licensing. Lessors also generally arrange to pay fuel taxes for these vehicles through the International Fuel Tax Agreement, which serves as a clearinghouse for state fuel tax payments to each state in which the vehicle is operated.

TRALA's members also include the Industry Council for Vehicle Renting and Leasing⁹ (the "Industry Council"), a coalition of automobile and truck lessors formed to

Leasing Ass'n, Inc., 520 So.2d 1333 (Miss. 1987) ("[N]either Ryder nor Saunders have equipment here and do not consistently utilize the Mississippi highways. In fact, they have no control over which highways the lessees of their vehicles use once those vehicles are leased.").

⁸ Thomas M. Corsi, *The Truckload Carrier Industry Segment, Trucking in the Age of Information*, Ashgate Publishing (2004); based on the author's calculations from 2001 Motor Carrier Annual Report, American Trucking Associations, Inc., Alexandria, Virginia.

⁹ The Industry Council members are Avis Budget Group, Daimler Chrysler Truck Financial, Dollar Thrifty Automotive Group, Enterprise Rent-A-Car, Key Equipment Finance, Navistar Financial Corporation, Penske Truck Leasing Company, Ryder System, U-Haul International, and PACCAR Financial Services Corporation.

address the issues facing the broader vehicle renting leasing industry, including state vicarious liability laws.

This free flow of vehicles in interstate commerce illustrates why vicarious liability imposed by a single state can adversely affect vehicle leasing operations nationwide. In the above example, if the vehicle leased in North Dakota is operated by the lessee in Minnesota and is involved in an accident in this state, the lessor could be subject to the liability imposed under Minnesota law, without ever having any intent to do business in the state or to subject itself to such laws.

Moreover, the leased vehicle does not even have to be operated in Minnesota to subject the lessor to vicarious liability. If the injured party is a resident of Minnesota, or the parties have some other connection to the state, the trial court may, through choice of law principles, opt to apply the substantive law of Minnesota, including its vicarious liability statute, even if the accident occurred outside of Minnesota and/or the lawsuit is brought in the courts of another jurisdiction besides Minnesota.¹⁰

Minnesota's vicarious liability law therefore increases the costs of doing business for all car and truck lessors wherever their principal place of business or the location of their leasing facilities. For lessors located in Minnesota or in a bordering state, the potential liabilities, and therefore the increased costs of operation, are much greater, resulting in significantly higher consumer prices. Because truck lessors provide vehicles

¹⁰ This possibility was discussed in congressional hearings during the consideration of a precursor to the Graves Amendment. *See* Prepared Statement of Rep. Oxley, The Rental Fairness Act, 1999 WL 959128 (Oct. 20, 1999).

to virtually every type of manufacturing, wholesale and retail entity in the country, the increased costs show up in higher costs of distributing virtually every type of product sold in the United States.

The history of the Graves Amendment illustrates the devastating impact that “liability without fault” laws have on vehicle lessors: many leasing entities were forced out of the market due to vicarious liability laws in just a handful of states.¹¹ For example, a number of press articles described the additional costs and other effects of the New York vicarious liability law on vehicle lessors in that state. One article noted, “Try to reserve a Hertz or Avis vehicle in Brooklyn or the Bronx, and you may face a surcharge of \$60 or \$80 a day over what the same car would rent for in the rest of the country.” Walter Olson, *Silver’s Wreck*, N.Y. Post, June 9, 2003.

This cost imposed a heavy toll on lessors. An April 1, 2004 article from the New York Sun noted, “By most estimates there were still about 400 independent rental agencies operating in New York two years ago. Today, there are only about 50. Within a year, there may be none.” William Tucker, *The Great Car-Rental Wipeout*, N.Y. Sun, April 1, 2004. See also, Tom Incantalupo, *Auto Leasing May Return to NY, Companies Would Resume Leasing If Bush Signs Bill Freeing Them from 1924 State Law on Accident Liability*, Newsday, Aug. 2, 2005; Michael Cooper, *Congress Passes Bill*

¹¹ See Prepared Statement of Ms. Sharon Faulkner, the Rental Fairness Act, 1999 WL 959129 (Oct. 20, 1999) (stating that due to vicarious liability laws she sold her small car rental company to a competitor and that over 300 car rental companies had closed in New York between 1990 and 1999).

Nullifying a State Law, and Making It Easier to Lease Cars in New York, N.Y. Times, Aug. 4, 2005.

The Graves Amendment eliminated vicarious liability to impose a uniform, nationwide legal structure under which a vehicle lessor could not be held liable for damages resulting from an accident merely because it owned the vehicle. This approach affords consistent and predictable application of liability laws based on fault alone, which promotes the free flow of interstate commerce.

Minnesota was one of a handful of states that retained vicarious liability before the Graves Amendment. Some 44 states had already eliminated vicarious liability for lessors.

The overwhelming weight of legal authority shows that Congress was within its power to pass the Graves Amendment, and specifically intended to preempt Minnesota's vicarious liability laws. Moreover, TRALA's membership offers significant support for the notion that the Graves Amendment substantially impacts interstate commerce.

ARGUMENT

I. MINNESOTA IS ONE OF THE SMALL MINORITY OF STATES WHICH IMPOSED VICARIOUS LIABILITY ON MOTOR VEHICLE LESSORS THAT CONGRESS SPECIFICALLY INTENDED TO PREEMPT BY THE GRAVES AMENDMENT.

Prior to enactment of the Graves Amendment, only a small number of states, including Minnesota, imposed vicarious liability on vehicle renting and leasing companies. In introducing his amendment, Rep. Sam Graves (6th Dist. - Mo.) stated the law's purpose:

Mr. Chairman, I am here today to correct an inequity in the car and truck renting and leasing industry. By reforming vicarious liability to establish a national standard that all but a small handful of States already follow, we will restore fair competition to the car and truck renting and leasing industry and lower costs and increase choices for all consumers.

151 Cong. Rec. H1200 (daily ed. March 9, 2005).

In an earlier version of the Graves Amendment, Congress considered the Rental Fairness Act of 1999 (“RFA”) H.R. 1954, 106th Cong. (2002), which contained language similar to the Graves Amendment but which did not pass Congress.¹² The House Commerce Committee report on the RFA emphasized that the law intended to counteract a limited number of states that maintained vicarious liability laws. The report states:

Vicarious liability is liability for the tort or wrong of another person. It is an exception to the general legal rule that each person is accountable for his own legal fault, but in the absence of such fault is not responsible for the actions of others. *In a small minority of States*, companies that rent or lease motor vehicles are held ‘vicariously’ liable for the negligence of their renters or lessees. . . . *These small number* of vicarious liability laws pose a significant competitive barrier to entry for smaller companies attempting to compete in these markets who cannot afford insurance coverage for potentially unlimited liability.

H.R. Rep. 106-774, pt. 1, at 4-5 (July 20, 2000) (emphasis added).

The legislative history also shows that Minnesota specifically was one of those states whose vicarious liability laws were intended to be preempted. Representative Jerrold Nadler of New York, an opponent of the legislation, listed Minnesota as among the states with laws that would be preempted:

¹² The court may consider the legislative history of the RFA because its language and purpose was nearly identical to the Graves Amendment. *See Landgraf v. USI Film Prod.*, 511 U.S. 244, 261-63 (1994).

This amendment, if passed, would nullify the laws of 15 States and the District of Columbia and would have the disastrous effect of allowing rental car companies to lease vehicles to uninsured drivers with no recourse for innocent victims should an accident occur. . . . Anybody, Republican or Democrat, who is from Arizona, Connecticut, Delaware, Iowa, Maine, Nevada, New York, Rhode Island, the District of Columbia, California, Florida, Idaho, Michigan, *Minnesota*, Oklahoma, and Wisconsin should not vote for this amendment, Republican or Democrat, unless you want to say to your State legislators: *We are going to preempt* the law of New York, of California, of Florida, wherever, because we know better.

151 Cong. Rec. H1200 (daily ed. March 9, 2005) (Rep. Nadler) (emphasis added).

Minnesota's own Representative James Oberstar also spoke in opposition to the Graves amendment. 151 Cong. Rec. H1202 (daily ed. March 9, 2005).

The "Minority Views" section of the House report also lists Minnesota among those states whose laws would be preempted by the RFA. H.R. Rep. 106-774, pt. 1, at 13 ("The proponents of H.R. 1954 intend that the legislation preempt 'vicarious liability' laws in 11 states (Florida, New York, California, Iowa, Michigan, *Minnesota*, Nevada, Idaho, Maine, Connecticut, and Rhode Island) and the District of Columbia. . .") (emphasis added)). During hearings on the RFA, Minnesota was listed as one of the states whose law would be preempted by the federal act. *See* Prepared Statement of Mr. Richard H. Middleton, Jr., ¹³ 1999 WL 9591131, at 3 (Oct. 20, 1999) (listing Minnesota as a state imposing vicarious liability).

¹³ Incidentally, at the time of his testimony Mr. Middleton was the President of the Association of Trial Lawyers of America, the former name of the Center for Constitutional Litigation, P.C. which is representing Appellants in this matter. Even Appellants' own attorneys recognized specifically that Minnesota law would be preempted by the federal statute.

Both the plain language and the legislative history of the Graves Amendment demonstrate Congress expressly intended to give the statute preemptive effect. Not only was the Graves Amendment intended to preempt state laws generally, but the legislative history confirms that Congress intended to preempt Minnesota law specifically.

The Graves Amendment was an attempt to bring those few states in line with the vast majority of states and provide a consistent, uniform level of protection for vehicle renting and leasing companies. Congress found that in light of the inherently interstate nature of the vehicle renting and leasing business, a uniform, national standard was needed. *See* Statement of Rep. Graves, 151 Cong. Rec. H1200 (daily ed. March 9, 2005) (“Since companies cannot prevent their vehicles from being driven to a vicarious liability State, they cannot prevent their exposure to these laws and must raise their rates accordingly. These higher costs have driven many small companies out of business, reducing the consumer choice and competition that keeps costs down.”); H. Rpt. 106-774, pt. 1, at 4 (“Further, because rented or leased motor vehicles are frequently driven across State lines, these small number of vicarious liability laws impose a disproportionate and undue burden on interstate commerce by increasing rental rates for all customers across the Nation.”).

This legislative history shows that Minnesota was in the small minority of states that continued to impose vicarious liability on vehicle renting and leasing companies. Congress sought to preempt those states’ vicarious liability laws to provide a uniform national standard protecting companies from liability based solely on the fault of the

driver. There can be no doubt Congress specifically intended to preempt Minnesota's law.

II. THE MINNESOTA NO-FAULT AND SAFETY RESPONSIBILITY ACTS ARE NOT MINIMUM FINANCIAL RESPONSIBILITY LAWS MEANT TO BE SAVED FROM PREEMPTION BY SUBSECTION (B)(2) OF THE GRAVES AMENDMENT.

TRALA wholeheartedly supports ERAC's arguments that the Minnesota statutes imposing vicarious liability up to the limits of \$115,000 per person/\$350,000 per accident are preempted by the Graves Amendment and are not saved by that amendment's two savings clauses.

Appellants contend that the Minn. Stat. §§ 169.09 and 65B.49 subd. 5a, read together, constitute "financial responsibility" laws saved from preemption by the Graves Amendment's saving clauses. But that contention is belied by the ordinary meaning and use of that term in both federal and state law. The term denotes laws that require vehicle owners and operators to show proof of minimum levels of insurance such that they can respond in damages for liability as a prerequisite to registering the vehicle.

Neither the Graves Amendment nor SAFETEA-LU defines the term "financial responsibility." Thus, the court must assume that Congress used the ordinary and common meaning of the term. *State of Minnesota v. Heckler*, 718 F.2d 852, 860-61 (8th Cir. 1983); *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1246 (11th Cir. 2008) ("When statutory terms are undefined, we typically infer that Congress intended them to have their common and ordinary meaning, unless it is apparent from context that the disputed term is a term of art."); *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1266

(11th Cir. 2006) (“A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”).

In the highest court yet to rule on the Graves Amendment, the United States Court of Appeals for the Eleventh Circuit in *Garcia* held that the common usage of the term “financial responsibility” refers to “state laws which require either liability insurance or a functionally equivalent arrangement.” *Garcia*, 540 F.3d at 1247. The court in *Garcia* noted the common definition of the phrase in Black’s Law Dictionary, which “defines financial responsibility only to include requirements that motorists have proof of ‘insurance or other financial accountability.’” *Id.* at 1248 (*quoting* Black’s Law Dictionary at 663 (8th ed. 2004)). For the Graves Amendment specifically, *Garcia* “conclude[d] that Congress used the term ‘financial responsibility law’ to denote state laws which impose insurance-like requirements on owners or operators of motor vehicles, but permit them to carry, in lieu of liability insurance per se, its financial equivalent, such as a bond or self-insurance.” *Id.* at 1247 (also noting in a footnote that those duties may arise as a condition of licensing or registration).

Additionally, the court can look at Congress’ use of the term “financial responsibility” in other statutes. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84 (1992) (comparing similar language in the Employee Retirement Income Security Act to determine the preemptive effect of the Airline Deregulation Act). In the context of the registration requirements for commercial motor carriers, federal law provides that the Secretary of Transportation

shall *register* a person to provide transportation . . . as a motor carrier if the Secretary finds that the person is willing and able to comply with—

.....

(c) the *minimum financial responsibility* requirements established by the Secretary pursuant to sections 13906 and 31138.

49 U.S.C. § 13902(a)(1) (emphasis added). Section 13906(a)(1) of Title 49 U.S.C. provides that

the Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes pursuant to, or as is required by, sections 31138 and 31139, and the laws of the State or States in which the registrant is operating, to the extent applicable.

Section 31138(a) requires the Secretary of Transportation to “prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary.” The statute requires “minimum amounts” of “financial responsibility” in subsection (b), and requires evidence of financial responsibility in subsection (c). Section 31139 contains similar provisions.¹⁴

Congress has used the term “financial responsibility” in a very particular way to describe the minimum levels of insurance or other surety to ensure that the motor carrier can respond in damages if it is held liable for death, injury or destruction of property. Importantly, those minimum levels of financial responsibility are required to register as a motor carrier with the federal government.

¹⁴ Pursuant to these statutes, the Federal Motor Carrier Safety Administration has promulgated minimum financial responsibility regulations for commercial motor vehicles at 49 C.F.R. Part 387.

The Graves Amendment uses this same kind of language. It exempts from preemption state “*financial responsibility* or insurance standards on the owner of a motor vehicle for the *privilege of registering* and operating a motor vehicle.” 49 U.S.C. 30106(b)(1) (emphasis added). Similar to the federal motor carrier registration statutes, “financial responsibility” is used in the Graves Amendment to mean those state laws which impose *minimum insurance requirements* as a condition to *registering a vehicle*.

Other states use the term “financial responsibility” to mean the requirement that vehicle owners obtain minimum levels of insurance as a condition to register the vehicle or to register and operate a vehicle after the owner has been involved in an accident. The cases and statutes cited herein show that the term financial responsibility is commonly used to refer to minimum insurance or surety requirements, and not maximum levels of vicarious liability as imposed by state law. *See, e.g., Del Real v. United States fire Insurance Crum & Forster*, 64 F. Supp. 2d 958, 962-63 (E.D. Ca. 1998) (“The average layperson would assume that the reference in the contract to the applicable financial responsibility law is to the familiar liability policy limit requirements of \$15,000 for a single person in one accident for bodily injury or death, \$30,000 per accident for bodily injury or death where there is more than one injured party, and \$5,000 for property damage in one accident, as established in Insurance Code § 11580.1 and Vehicle Code § 16506.”); *Progressive Insurance Co., v. Simmons*, 953 P. 2d 510, 521 n.13 (Ak. 1998) (“A person whose license is suspended under the [Alaska Mandatory Automobile Insurance Act, Title 28, ch. 22 Alaska Statutes] is required to file proof of insurance under the [Motor Vehicle Safety Responsibility Act, title 28, ch. 20 Alaska Statutes]

before his or her driving privileges may be restored. See AS 28.22.061.”); *Quetawki v. Prentice*, 303 F. Supp. 737 (D. N.M. 1968) (New Mexico Financial Responsibility Act, N.M. Stat. Ann. §§ 64-24-1-4 and 64-24-42-104 “provides for suspension of the driver’s license and automobile license plates without a hearing where the motorist whose privileges are being suspended has been involved in an accident, is uninsured, and is unable to post security for possible damages.”); *Lonesathirath v. Avis Rent-A-Car System, Inc.*, 937 F. Supp. 367, 371-72 (E.D. Pa. 1995) (holding the only provision of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. Cons. Stat. Ann. §§ 1701-1799.7, applying to Avis was section 1787 providing for minimum coverage limits of \$15,000 per person and \$30,000 per accident).¹⁵

In short, a financial responsibility law requires a person to have a minimum level of assets available to cover damages *if that person is held liable for damages*. A vicarious liability law is a completely different concept – it provides that a person may be held liable for injury without establishing fault, regardless of whether the person has any

¹⁵ See also, Ga. Code Ann. 40-2-26(d)(2) (2006) (“No vehicle registration or renewal thereof shall be issued to any motor vehicle unless the tag agent receives satisfactory proof that the motor vehicle is subject to a policy of insurance that provides the *minimum motor vehicle insurance coverage* required by Chapter 34 or Title 33 or an approved self-insurance plan . . .”) (emphasis added) (App. 97-101); S.C. Code (unannotated) 56-9-20 (11) (defining “proof of financial responsibility” as “Proof of ability to respond to damages for liability . . . in the amount of fifteen thousand dollars because of bodily injury to or death of one person in any one accident and, subject to this limit for one person, in the amount of thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident . . .”) and S.C. Code (unannotated) 56-10-10 (“Every owner of a motor vehicle required to be registered in this State shall maintain the security required by Section 56-10-20 . . .” which requires insurance policies for “at least the minimum coverages specified in Sections 38-77-140 through 38-77-230 . . .”) (App. 90-96).

assets to cover the damages. Minnesota's limits of \$115,000/\$350,000 under Minn. Stat. § 65B.49 subd. 5a(i) are not minimum financial responsibility laws imposed for the purpose of registering a vehicle. They are caps on damages that may be awarded when the rental or leasing company is found vicariously liable under Minn. Stat. § 169.09.

Appellant's arguments under the second part of the Graves Amendment's savings clause, 49 U.S.C. § 30106(b)(2), fare no better. That clause preserves state laws which impose liability on renting or leasing companies if they fail to meet the state's minimum insurance requirements. As ERAC points out, Minnesota maintains a number of laws for failing to maintain minimum insurance. Respondent's Brief at 20.

This is, in fact, the only logical reading of the Graves Amendment. A finding that the Graves Amendment's savings clauses preserve Minn. Stat. §§ 169.09 and 65B.49 subd. 5a would allow the exception to swallow the rule. Under no circumstances would a rental and leasing company be able to escape vicarious liability for the fault of the renter. *See Garcia*, 540 F.3d at 1248 ("If we construe the Graves Amendment's savings clause as appellants wish, it would render the preemption clause a nullity."). For that reason, among others, virtually every court that has confronted the Graves Amendment has upheld its preemption of state law. *See, e.g., Garcia*, 540 F.3d 1242; *Flagler v. Budget Rent A Car System, Inc.*, 538 F. Supp. 2d 557, 558 (E.D.N.Y. 2008) ("There is no question but that the Graves Amendment preempts state laws that impose vicarious liability on businesses that rent or lease motor vehicles."); *Jasman v. DTG Operations, Inc.*, 533 F. Supp. 2d 753, 758 (W.D. Mich. 2008) ("Based on the cited authority, the Court finds the Graves Amendment preempts Michigan's Motor Vehicle Civil Liability

Act and that owners of vehicles, such as Dollar Rental, are not liable solely by reason of being the owner [**12] of the vehicle.”). Additionally, the United States District Court for the District Court of Minnesota, in a recent decision which has not yet been published, followed the Court of Appeals decision in this matter and found that the Graves Amendment preempts Minnesota law. *Canal Insurance Co. v. Kwik Kargo, Inc. Trucking*, Civil Case No. 08-439 (JNE-RLE) (D. Minn. April 21, 2009) (*see* Addendum).

There is no doubt that Minnesota intended to encourage, if not require, rental companies to obtain residual insurance to cover losses up the amounts specified in Minn. Stat. § 65B.49, subd. 5a. Appellant concludes, therefore, that because that statute requires insurance, it must be a financial responsibility statute. *See* Appellant’s Brief at 12. But that conclusion ignores the plain meaning of the term financial responsibility law as a requirement for vehicle owners to maintain insurance or its equivalent for the privilege of registering a vehicle to ensure minimum levels of compensation should the owner be found liable.

Where Appellant’s argument falls apart is in its failure to recognize that the Graves Amendment prohibits states from imposing vicarious liability on rental companies in the first place. If there is no vicarious liability under Minn. Stat. § 169.09, the caps placed on that liability under Minn. Stat. § 65B.49, subd. 5a become inoperative. The vicarious liability damage caps are wholly dependent on the imposition of liability under § 169.09, subd. 5a. Without liability, there can be no damages, capped at \$115,000/\$350,000 or not.

Appellant essentially mixes two separate and distinct legal concepts – liability which results in an award of damages and proof of ability to pay those damages. The Graves Amendment preempts the former and preserves the latter. Liability refers to the finding of fault by a tortfeasor by reason of his actions or inactions which resulted in damages to another. Vicarious liability artificially imposes liability on another party simply because of that party’s relationship with the real tortfeasor. *Nadeau v. Melin*, 110 N.W.2d 29, 34 (Minn. 1961). Regardless of the fairness of placing liability on a party who is not the real tortfeasor, the concept is still one of holding someone accountable for the injuries of another.

The proof of ability to respond in damages for the privilege of registering a vehicle, however, is a completely different concept. It refers to the interest of the state, acting on behalf of persons who will be injured in vehicle accidents, to ensure that there is some amount of money available to compensate the injured party. Requiring proof of the ability to respond in damages is not the same as requiring someone to be liable for damages.

In this regard, Appellant asserts that reading the Graves Amendment as ERAC and the Court of Appeals did would also negate Minn. Stat. § 65B.48, subd. 3(1) and § 65B.49 subd. 3(1), which impose minimum financial responsibility requirements on vehicle owners for the purposes of registering a vehicle in the amounts of \$30,000 for one person and \$60,000 per accident for bodily injury. Appellant’s Brief at 21-22. TRALA agrees with ERAC that that argument is not before this Court. There is no reason for this Court to rule whether the Graves Amendment preempts § 65B.49, subd. 3. Because

ERAC agreed to pay those minimum amounts into the court as a matter of contract leaves only the question of whether ERAC is subject to vicarious liability damages under Minn. Stat. §§ 169.09 subd. 5a and 65B.49 subd. 5a(i).

As ERAC points out and the Court of Appeals found, ERAC agreed to pay the amounts specified in § 65B.49, subd. 3 as part of its rental agreement. Respondent's Brief at 9 n.5 ("ERAC's rental agreement lawfully limited its self-insured obligation to Minnesota's minimum limit for residual liability . . .) and 19-20 ("ERAC undisputedly has complied with [financial responsibility] laws by self-insuring for the first \$2 million in accordance with North Dakota self-insurance law and by committing a portion of its self-insurance obligation contractually for the protection of an operator of a rented motor vehicle . . .); *Meyer v. Nwokedi*, 759 N.W.2d 426, ___¹⁶ (Minn. App. 2009) ("Further, in accordance with the rental agreement, Enterprise has paid the \$60,000 per accident limit into court."), and ___ ("The rental agreement contractually limited Enterprise's liability to Minnesota's minimum residual liability insurance obligation."). In making these payments, ERAC was acting essentially as an insurer by contractually agreeing to cover the driver of its vehicle up to the minimum levels of financial responsibility required in § 65B.49, subd. 3.

TRALA asserts, however, that absent provisions in the rental agreement to the contrary, vehicle rental and leasing companies owe *no* obligation to pay damages even in the amounts provided for in Minnesota's minimum financial responsibility statute solely because of the torts committed by the renter/driver. The Graves Amendment is clear that

¹⁶ The full pagination for this opinion has not yet been provided.

no vicarious liability may be imposed on vehicle leasing and rental companies. The fact that a state has purported to limit damages incurred under vicarious liability, for either \$350,000 or \$60,000, does not overcome the Graves Amendment's strict prohibition on imposing liability on rental companies in the first place. In fact, of the twelve states in the U.S. that had vicarious liability statutes outlawed at the time of enactment of the Graves Amendment in 2005, only three allowed unlimited vicarious liability. The other states had some form of limited or capped vicarious liability in place. Congressman Graves, through his public statements and testimony on the issue prior to passage, made clear his intention that his legislation would preempt vicarious liability completely in every state in the union. 151 Cong. Rec. H1200-02 (daily ed. March 9, 2005). The suggestion that a form of capped vicarious liability was intended to be allowed to continue through the MFR provision in the Graves Amendment is incompatible with the plain language of the statute and this legislative history.

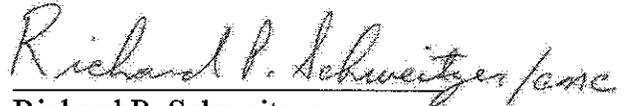
That rental companies may not be required to pay those minimal damages for vicarious liability under § 65B.49 subd. 3 does not mean that provision has no effect. Under subsection (b)(1) of the Graves Amendment, states may continue to require rental and leasing companies to maintain insurance on the vehicles they own as a prerequisite for registering those vehicles. Rental and leasing companies may be called upon to pay damages from that insurance in any number of circumstances. In many instances, like this case, rental companies provide insurance for their renters through the rental agreement. As ERAC points out, rental and leasing companies are not immune from all liability under the Graves Amendment. They may be sued for their own negligence in

renting or leasing a vehicle. The minimum financial responsibility insurance requirements of Minn. Stat. § 65B.49 subd. 3 therefore, are unaffected by the Graves Amendment except to the extent that they impose vicarious liability on a vehicle rental or leasing company.

CONCLUSION

For the foregoing reasons and the reasons set forth in Respondent's brief, TRALA urges this Court to uphold the Court of Appeals' decision.

Respectfully submitted,



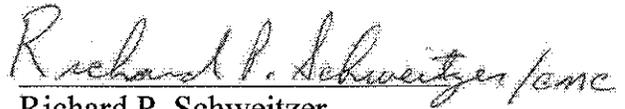
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CERFIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief of *Amicus Curiae* Truck Renting and Leasing Association, Inc. conforms to Minn. R. Civ. App. P. 132.01, subd. 3(c)(1) for an *amicus* brief produced with proportionally spaced font. There are 5,044 words in this Brief, which was produced using Microsoft Office Word 2003.



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