

NO. A08-250

State of Minnesota

In Court of Appeals

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,

and

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.

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STATEMENT OF ISSUE

Are Minn. Stat. §§ 169.09, Subd. 5a and 65B.49, Subd. 5a(i) state financial responsibility laws or state liability insurance requirements which are preserved by an exception to a federal statute preempting vicarious liability for rental vehicle owners under 49 U.S.C. § 30106 (effective August 10, 2005)?

Trial Court Held: No.

49 U.S.C. § 30106

Minn. Stat § 65B.49, Subd. 5a(i)

Minn. Stat. § 169.09, Subd. 5a (formerly Minn. Stat § 170.54)

Dahl v. R.J. Reynolds, 742 N.W.2d 186 (Minn. App. 2007)

STATEMENT OF THE CASE

This action was commenced as a wrongful death and personal injury action by Nancy Meyer, as Trustee for the heirs of the decedents Margaret Mphosi and Joshua Chairo Mphosi, and as Guardian Ad Litem for injured minors Lucas Mphosi and Jehoshophat Mphosi, arising out of a single vehicle crash which occurred along I-94 near Fergus Falls, Minnesota, on June 5, 2004 (Complaint, A, 1-4). The defendants included the vehicle driver, Bibian Nwokedi, and the vehicle owner, Enterprise Rent-A-Car of the Dakotas/Nebraska (Enterprise) (A, 1). By summary judgment motion, Enterprise raised the issue of whether or not it was required to either provide or be vicariously liable for the minimum financial responsibility limits of insurance required by Minn. Stat. § 65B.49, Subd. 3(1) (\$100,000 per person/\$300,000 per accident, plus an escalator clause

pursuant to Minn. Stat. § 65B.49, Subd. 5a(i)(3), for limits of \$115,000 per person/\$350,000 per accident as of January 1, 2003), or the lesser amount set forth in Minn. Stat. § 65B.49, Subd. 5a (\$30,000 per person/\$60,000 per accident) (A, 13).

The Honorable Barbara Hanson, Judge of the District Court, granted Enterprise's Motion for Summary Judgment by Order Granting Motion for Summary Judgment and Memorandum filed in the office of the Otter Tail County Court Administrator on April 6, 2007 (A, 15-27). Although a Judgment was entered by the Court Administrator on that same day (A, 16), it was only for a part of the action, so it was not a final judgment. Final Judgment was filed on December 14, 2007 (A, 28). This appeal followed (A, 29-30).

STATEMENT OF FACTS

At approximately 11:16 a.m. on June 5, 2004, a Ford Expedition being driven by Bibian Nwokedi left the eastbound lanes of I-94 near Fergus Falls, Minnesota, rolled over, and came to rest in the median/ditch next to the highway (Accident Report, A, 39). As a result of the single vehicle rollover, Margaret Mphosi died. Her son Joshua also died from injuries received in said rollover, and two of her other children, Lucas and Jehoshophat, suffered bodily injury. Intervenors Bunmi Obembe and Christopher Obembe were also passengers in the vehicle and suffered extensive injuries (Complaint in Intervention; Accident Report, A, 39).

At the time of her death, decedent Margaret Mphosi was married to Maboko Samuel (Sam) Mphosi, who is also the father of said children. Sam was a graduate

student at North Dakota State University in Fargo, North Dakota, and a part-time minister. Sam had rented the Ford Expedition from Enterprise so that his family and others could perform church work in southern Minnesota. (Statement of Mphosi, A, 34).

Enterprise is a motor vehicle rental company (Eby Aff., p. 1, ¶ 3, A, 42). It had rented the vehicle to Sam Mphosi at its Fargo, North Dakota, office on June 4, 2004 (Eby Aff., p. 1, ¶ 2, A, 42; Rental Agreement, A, 37). Enterprise, at the time of the rollover, was the owner of the subject vehicle (Eby Aff., p. 1, ¶¶ 2 and 3, A, 42; Registration Certificate, A, 46).

Enterprise was self-insured for liability (Keller Aff., ¶¶ 4 and 5, A, 45, 47-48). Enterprise, in its Rental Agreement, agreed to provide the minimum liability insurance required by the state where the vehicle was operated - - in this case Minnesota. (Rental Agreement, ¶ 6, A, 38):

6. BODILY INJURY/PROPERTY DAMAGE
RESPONSIBILITY TO THIRD PARTIES:

However, if the renter or authorized driver does not have insurance (whether written as primary, excess or contingent) which equals or exceeds the minimum limits required by the state in which the vehicle is being operated, and has not violated any of the terms of this rental agreement, Owner agrees to defend and indemnify the renter or authorized driver up to the minimum limits required by the Financial Liability Laws of the state in which the vehicle is being operated.

If, notwithstanding the foregoing, the Owner is required by law to defend and indemnify the renter or authorized driver, the Owner will defend and indemnify the renter or authorized

driver but only up to the minimum limits required by the state in which the vehicle is being operated.

However, if renter is in compliance with the terms and conditions of this agreement, and if Owner is determined by law to provide liability protection to any renter or authorized driver, such liability protection shall be limited to the minimum financial responsibility limits of the state in which the vehicle is operated.

Minnesota law contains a similar statutory requirement for a vehicle owner. Minn. Stat. § 65B.48, Subd. 1 and Minn. Stat. § 65B.49, Subd. 5a(i)(2).

Enterprise has acknowledged that it must provide at least \$30,000/\$60,000 in liability insurance coverage (See, Petition to Deposit Self-Insurance Proceeds, ¶¶ 3 and 4, A, 50).

ARGUMENT

I. Scope of Review.

The issue before the Court involves statutory construction of a federal law, 49 U.S.C. § 30106, and Minnesota law, Minn. Stat. §§ 169.09, Subd. 5a and 65B.49, Subd. 5a(i). As such, the question before the Court is a legal issue fully reviewable on appeal. Hyatt v. Anoka Police Dep't., 691 N.W.2d 824, 826 (Minn. 2005) (questions of statutory interpretation are reviewed *de novo*).

II. Minnesota's Limited Financial Responsibility and/or Insurance Obligation Imposed on a Rental Vehicle Owner is Not Preempted by Federal Law.

Enterprise's position, adopted by the District Court (A, 22-23), is that Congress preempted all vicarious liability with respect to rental car companies by its enactment of 49 U.S.C. § 30106, effective August 10, 2005 (the "Graves Amendment"). The Graves Amendment itself, however, contains a "savings provision" in subsection (b) which preserves the effectiveness of state financial responsibility and/or liability insurance requirements. Minnesota's statutory scheme, enacted in the form of Minn. Stat. §§ 169.09, Subd. 5a and/or 65B.49, Subd. 5a(i), when interpreted in tandem, fits squarely within that exception to federal preemption.

Minnesota's version of vicarious liability on rental company owners is limited, in that it "capped" the rental car company liability at \$115,000 per person/\$350,000 per accident on or after January 1, 2003, if the car rental business has liability insurance for those limits. Minn. Stat. § 65B.49, Subd. 5a(i)(3). This is not the type of unlimited vicarious liability which Congress sought to regulate or prohibit by the adoption of 49 U.S.C. § 30106.

A. Preemption is Disfavored

"Because the States are independent sovereigns in our federal system, [courts] have long presumed that Congress does not cavalierly pre-empt state-law causes of action." Medtronic v. Lohr, 518 U.S. 470, 485 (1996). Courts must assume that federal law does not supersede a state's historic police powers "unless that [is] the clear and manifest purpose of Congress." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230

(1947); see also Hillsborough County, Fl. v. Automated Med. Labs., 471 U.S. 716, 719 (1985) (stating that the presumption against preemption ensures “that state and local regulation of health and safety matters can constitutionally coexist with federal regulation” because such matters are “primarily and historically a matter of local concern”).

In Dahl v. R.J. Reynolds Tobacco Co., 742 N.W.2d 186, 191 (Minn. App. 2007), this Court summarized the approach to reviewing claims of preemption, as follows:

Although the doctrine of preemption is firmly rooted, appellants correctly assert that there is a “presumption against preemption.” See, e.g., CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 668, 113 S.Ct. 1732, 1739, 123 L.Ed.2d 387 (1983). “The presumption against preemption is a necessary requirement for a properly functioning and well-balanced federal system.” Harbor Broad., Inc. v. Boundary Waters Broadcasters, Inc., 636 N.W.2d 560, 564 n. 1 (Minn.App.2001). The burden of demonstrating preemption rests with the defendant. See Silkwood v. Kerr-McGee, Corp., 464 U.S. 238, 255, 104 S.Ct. 615, 625, 78 L.Ed.2d 443 (1984).

B. The “Graves Amendment”

Subsection (a) of the Graves Amendment generally insulates lessors of motor vehicles from unlimited liability. It provides:

(a) In general.— An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if —

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

49 U.S.C. § 30106(a).

Subsection (b), however, preserves state financial responsibility and insurance laws. Subsection (b) provides, in relevant part:

(b) Financial responsibility laws. – **Nothing in this section supersedes the law of any State . . . –**

(1) **imposing financial responsibility or insurance standards on the owner of a motor vehicle** for the privilege of registering and operating a motor vehicle; or

(2) **imposing liability on business entities** engaged in the trade or business of **renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law** (emphasis added).

Id. at § 30106(b). The question, therefore, is what are Minnesota’s financial responsibility and/or liability insurance requirements for rental car owners.

C. Minnesota’s Statutes

Minn. Stat. § 169.09, Subd. 5a (formerly Minn. Stat. § 170.54), states:

“Subd. 5a. **Driver deemed agent of owner.** Whenever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof.”

Minn. Stat. § 65B.49, Subd. 5a(i)(2) states:

“(2) Notwithstanding section 169.09, subdivision 5a, an owner of a rented motor vehicle is not vicariously liable for legal damages resulting from the operation of the rented motor vehicle in an amount greater than \$100,000 because of bodily injury to one person in any one accident and, subject to the limit for one person, \$300,000 because of injury to two or more persons in any one accident, and \$50,000 because of injury to or destruction of property of others in any one accident, if the owner of the rented motor vehicle has in effect, at the time of the accident, a policy of insurance or self-insurance, as provided in section 65B.48, subdivision 3, covering losses up to at least the amounts set forth in this paragraph. Nothing in this paragraph alters or affects the obligations of an owner of a rented motor vehicle to comply with the requirements of compulsory insurance through a policy of insurance as provided in Section 65B.48, subdivision 2, or through self-insurance as provided in section 65B.48, subdivision 3; or with the obligations arising from section 72A.125 for products sold in conjunction with the rental of a motor vehicle. Nothing in this paragraph alters or affects liability, other than vicarious liability, of an owner of a rented motor vehicle.”

The minimum liability limits for a motor vehicle rental company of \$100,000 per person / \$300,000 per accident recited in Minn. Stat. § 65B.49, Subd. 5a(i)(2), are subject to a small escalator clause under Minn. Stat. § 65B.49, Subd. 5a(i)(3), making the limits \$115,000 per person/\$350,000 per accident as of January 1, 2003. It is those limits (\$115,000 per person/\$350,000 per accident) that apply to this crash.

D. Statutory Construction

In matters of statutory interpretation, courts must construe statutory provisions not in isolation, but in light of the statute as a whole. Smith v. United States, 508 U.S. 223, 233 (1993). “However inclusive may be the general language of a statute, it will not be

held to apply to a matter specifically dealt with in another part of the same enactment.” Fourco Glass Co. v. Transmirra Prods. Corp., 353 U.S. 222, 228 (1975). Thus, when the Graves Amendment is read as a whole, the specific provisions of subsection (b) control the general provisions of subsection (a), thereby preserving the state financial responsibility laws from the statute’s general immunity provisions. See, Fourco Glass Co., 353 U.S. at 228.

The Minnesota Supreme Court recently summarized the role of the courts when interpreting statutes. In Granville v. Minneapolis Public Schools, Special School District No. 1, 732 N.W.2d 201, 206 (Minn. 2007), saying:

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2006). “When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” *Id* If a statute is ambiguous, however, we look to other factors to determine legislative intent. *Id*

The Graves Amendment does not define what constitutes “financial responsibility.” See, 49 U.S.C. § 20106(d) (failing to define financial responsibility in its “Definitions” subsection). “[W]here Congress uses terms that have accumulated settled meaning. . . [] a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.” See, Field v. Mans, 516 U.S. 59, 69 (1995) (citations and internal quotation marks omitted).

The established meaning of financial responsibility laws is clear. Financial responsibility laws “regulate the rights of operators and owners of motor vehicles [and]...

the rights and obligations of those insurers who issue policies to comply with the statute.”

15 L. Russ & T. Segalla, Couch on Insurance, 3d § 109:36, at 53 (rev. ed. 1999). They ensure limited compensation for accident victims:

[1] **by providing for proof of financial responsibility as a condition of the granting of a driver’s license or certificate of registration**, [2] *or* by providing for the suspension or revocation of a driver’s license or certificate of registration for *failure* to satisfy a final judgment [3] *or* furnish proof of responsibility after an accident or after a violation of a motor vehicle statute.

Id. § 109:34, at 46 (emphases added).

State financial responsibility laws impose duties on owners that are not necessarily related to their legal fault in causing an accident. In cases involving borrowed or rented vehicles, financial responsibility laws may impose a duty on the owner or the owner’s insurer to respond in damages in the amount of her financial responsibility or furnish proof of future ability to respond in damages even when the owner is *not* the active tortfeasor. See, e.g., Chambers v. Agency Rent-A-Car, Inc., 878 P.2d 1164, 1167 (Utah Ct. App. 1994) (“The express language of and the purpose behind Utah’s Motor Vehicle Financial Responsibility Act places liability on [Agency Rent-A-Car] the self-insurer, *as an insurer*, to pay certain benefits on behalf of permissive users of its vehicles who injure third parties.”); Allstate Ins. Co. v. Fowler, 480 So. 2d 1287, 1289-90 (Fla. 1985) (holding that an owner who rents a vehicle has the primary obligation to respond in damages in the amount set forth under Florida’s financial responsibility law, § 324.021(7), Fla. Stat. (2007), even when the owner is not the active tortfeasor); Sheehan

v. Div. of Motor Vehicles of Cal., 35 P.2d 359 (Cal. Dist. Ct. App. 1934) (upholding the suspension of an owner's license, where the owner, who was not the active tortfeasor, was unable to satisfy a judgment against her for damages caused by her permissive user after her insurer had become insolvent).

State financial responsibility laws may require *both* satisfaction of a judgment *and* proof of ability to respond in damages as a condition to maintaining registration or driving privileges. Couch on Insurance, 3d § 109:41, at 61. The Supreme Court charted the early evolution of these laws in Kesler v. Department of Public Safety of Utah, 369 U.S. 153 (1962), overruled on other grounds by Perez v. Campbell, 402 U.S. 637 (1971), which concerned the intersection of Utah's financial responsibility law and the federal Banking Act.¹ There, the Court explained that states, including Minnesota, had largely modeled their laws on the Uniform Vehicle Code of 1956. Kesler, 369 U.S. at 165.

¹ The Supreme Court in Perez v. Campbell overruled Kesler's purpose-centric approach to deciding when state law conflicts with federal law under the Supremacy Clause. 402 U.S. at 651-52. In overruling Kesler, the Perez Court questioned whether Kesler had correctly identified the purpose of Utah's financial responsibility law. Id. at 652-53. But Perez did not dispute Kesler's account of the history of financial responsibility laws. See id.; see also Miller v. Anckaitis, 436 F.2d 115, 118 (3d Cir. 1970) (*en banc*) (recognizing that in Kesler "Justice Frankfurter made an exhaustive study of the legislative history of motor vehicle responsibility laws").

The Perez majority did note that state financial responsibility laws that impose a duty on vicariously liable owners to respond in damages likely do not promote safety, but rather are "a means for the enforcement of judgments." Id. at 654 n.14 (quoting Miller v. Anckaitis, 436 F.2d 115, 118 (3d Cir. 1970)). In dissent, four Justices disagreed with the majority's characterization of the purpose of Arizona's financial responsibility law. Id. at 667 (Blackmun, J., dissenting, joined by Chief Justice Warren and Justices Harlan and Stewart). Despite that disagreement, as the dissenters explained, the majority's preemption analysis did not turn on what the purpose of Arizona's financial responsibility law might be. *Id.*

The new Uniform Code...requires persons involved in certain accidents to deposit security to cover the past if they were not insured. It requires proof of future responsibility from those convicted of certain violations and from those owing judgments unsatisfied after thirty days. *In addition*, unless insured, the judgment debtor must satisfy the obligation, to the extent of the minimum amounts of financial responsibility required, before his privileges are restored. Installment payments, until default, are allowed.

Id. (emphasis added). Kesler cited Minnesota as among those states to adopt the “the material provisions of the new Uniform Code with respect to financial responsibility,” as described above, except that Minnesota permitted “unpaid judgments [to be] reported by the court or clerk without request by the creditor.” *Id.* at 166 n.30 (citing “Minnesota (Laws 1945, c. 285, as amended, Minn. Stat., 1953, c. 170)”).

Chief Justice Warren, who otherwise disagreed with the Kesler majority’s Supremacy Clause analysis, explained:

The State has a legitimate interest in requiring proof of financial responsibility from drivers who have not responded in damages for an accident; and inherent in that interest is the right to demand as a requisite to restoration of driving privileges, that all prior judgments for automobile accidents be paid.

Id. at 180-81 (Warren, C J., dissenting).

Thus, financial responsibility, as commonly defined, includes laws that impose on owners, even when they are not active tortfeasors, a duty to satisfy judgments for the purpose of providing limited compensation and/or to provide proof of future ability to respond in damages.

Consistent with these authorities, the Minnesota Supreme Court has long defined the term “financial responsibility.” In Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 415 (Minn. 1943), it said:

“Financial responsibility means obligation to pay a third party.” (Citations omitted.)

The Supreme Court went on to say in Christensen, Id.:

Parts of a statute are not to be viewed in isolation. A statute should be construed as a whole. Words and sentences are to be understood in no abstract sense, but in the light of their context, which communicates meaning and color to every part.

E. Minnesota’s Owner’s Responsibility Statute is a Financial Responsibility Law.

Without a doubt, the original owner’s financial responsibility statute (then numbered § 170.04, now § 169.09, Subd. 5a) was enacted as a financial responsibility law. The title of the act itself (1933 Minn. Laws, Ch. 351) explicitly states that its purpose is to “provide for the establishment of financial responsibility by owners of motor vehicles....” See, Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 414 (1943). In Section 17 (1933 Minn. Laws, Ch. 351), the Legislature directs that its enactment be cited as the “Safety Responsibility Act.”

The Supreme Court in Christensen went on to explain that this purpose (i.e. “financial responsibility”) was accomplished in a number of ways, including revocation of drivers licenses for failure to pay a final judgment, renewing drivers license only if there was proof of ability to pay damages and that the licensee is insured by an insurance

carrier authorized to do business in Minnesota, **and** (in then § 170.04, later § 170.54 and now § 169.09, Subd. 5a) imposing an obligation on owners to pay damages caused by the negligence of a permissive user. Id. 10 N.W.2d at 415. (See, 1933 Minn. Laws, Ch. 351, § 4).

The fact that the legislature was seeking to provide for the availability of liability insurance coverage in situations where there was a permissive user of someone else's motor vehicle was underscored in Hutchings v. Bourdages, 291 Minn. 211, 189 N.W.2d 706 (1971). There, the Supreme Court reaffirmed that the original owner's financial responsibility statute was enacted "as part of the Safety Responsibility Act," Id. at 213, and specifically noted:

"The salutary effect was 'to give to persons injured by the negligent operation of automobiles an approximate certainty of an effective recovery **by making the registered owner, who is (encouraged by the act) to take out insurance to cover his liability * * ***, responsible as well as the possibly or probably irresponsible person whom the owner permits to drive the car * * *.'" Restatement, Torts, Section 485, B, quoted approvingly in Jacobsen v. Dailey, 228 Minn. 201, 207, 36 N.W.2d 711, 714 (emphasis added).

This, of course, was before the advent of mandatory motor vehicle liability insurance, which was enacted by the Legislature in 1974 as part of the original no-fault act, (1974 Minn. Laws, Ch. 408), effective January 1, 1975 (Id., at § 35).

Since then, Minn. Stat. § 65B.48, Subd. 1, has required all motor vehicle owners whose vehicles are operated in Minnesota to provide "residual liability insurance" in the amount of \$30,000 per person/\$60,000 per accident. Minnesota law also continued to

require that all vehicle owners also be financially responsible for damages caused by negligent permissive users under Minn. Stat. § 170.54. Owner's financial responsibility was enforced against car rental companies. Shuck v. Means, 302 Minn. 93, 226 N.W.2d 285 (1975) (unauthorized use by subpermittee still required Hertz to comply with the owner financial responsibility provisions of the Safety Responsibility Act). An effort to shift primary responsibility from the rental car owner to the renter's own liability insurance was rejected by the Supreme Court in Hertz Corp. v. State Farm Mut. Ins. Co., 573 N.W.2d 686 (Minn. 1998) (rental agreement provision shifting primary liability insurance coverage to renter's policy void).

In 1995, however, the Legislature modified the financial responsibility requirements with respect to car rental company vehicle owners by enacting Minn. Stat. § 65B.49, Subd. 5a(i) (1995 Minn. Laws, Ch. 225). In doing so, the Minnesota Legislature "capped" the financial responsibility of a car rental company at \$100,000 per person/\$300,000 per accident (with an escalator clause). Minn. Stat. § 65B.49, Subd. 5a(i)(2) and (3). That "capped" financial responsibility (available to vehicle owners who are car rental companies, but not to other Minnesotans) came with the requirement that the car rental vehicle owner provide residual liability insurance, as generally required by Minn. Stat. § 65B.48, but in the amount of \$100,000 per person / \$300,000 per accident (with an escalator clause). Minn. Stat. § 65B.49, Subd. 5a(i)(2) and (3). Hence, the Legislature established a higher minimum insurance requirement for entities engaged in the car rental business. That residual liability insurance, under Minn. Stat. § 65B.48,

applies when a vehicle is used within Minnesota (Minn. Stat. § 65B.48, Subd. 1), and may be supplied by either an insurance policy (Subd. 2) or approved self insurance (Subd. 3). Enterprise's, in this case, is supplied via self insurance (Keller Aff. Ex. 2, A, 47-48).

Clearly, Minnesota's statutory scheme of limited financial responsibility on the part of a vehicle owned by a car rental company is entirely consistent with the subsection (b) exemption from preemption contained within the Graves Amendment. Minnesota's scheme is, simply, a "financial responsibility law" within the terms of the statutory preemption set forth in 49 U.S.C. § 30106(b). The Graves Amendment, in subsection (b) is explicit:

**"Nothing in this section supersedes the law of any State...
(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle..."** (emphasis added).

Minnesota's statutory scheme of limited financial responsibility in the form of vicarious liability for a car rental company is not "clearly and manifestly" preempted by federal law.

F. Minnesota's "Insurance Standards" for the Owner of a Rental Vehicle are Higher than the Minimum Standards Imposed Upon the Owner of a Personal Vehicle, and are Not Preempted by the Graves Amendment

Even if the owner's responsibility statute is not a "financial responsibility law" within the meaning of the Graves Amendment, Minnesota's statutory scheme for imposing insurance requirements of \$100,000 per person/\$300,000 per accident (\$115,000/\$350,000 at the time of this accident) is nonetheless exempt from preemption

under the Graves Amendment as a valid “insurance standard” applicable to the owner of a rental vehicle.

The second clause of 49 U.S.C. § 30106(b)(1) exempts from preemption a state’s “insurance standards” imposed on a motor vehicle owner “for the privilege of...operating a motor vehicle” within the state. In Minnesota, the insurance standards for an owner of a rental vehicle are higher than those imposed upon the owner of a personal motor vehicle.

With enactment of the no-fault act in 1975, every owner was required to maintain “a plan of reparation security” which included “residual liability coverage” on motor vehicles operated within the state. Minn. Stat. § 65B.48, Subd. 1. In other words, every motor vehicle owner, whether a Minnesota resident or not, whether a car rental company or a private owner, was required to have liability insurance applicable to accidents happening in Minnesota. That minimum insurance limit is \$30,000 per person/\$60,000 per accident. Minn. Stat. § 65B.49, Subd. 3(1). Car rental owners, however, are covered by a special subpart of Minn. Stat. § 65B.49, which the Legislature added in 1995 (1995 Minn. Laws, Ch. 225). In it, the Legislature determined that the owner of a rented vehicle must provide limits of \$100,000/\$300,000 (now escalated to \$115,000/\$350,000), if the motor vehicle rental company wanted to limit its owner’s responsibility exposure under Minn. Stat. § 169.09, Subd. 5a.

The provisions of Minn. Stat. § 65B.49, Subd. 5a(i)(2) expressly state, in part, that:

“(2)...if the owner of the rented motor vehicle has in effect, at the time of the accident, a policy of insurance or self-insurance, as provided in section 65B.48, subdivision 3, **covering losses up to at least the amounts set forth in this paragraph** (emphasis added).”

The amounts set forth in that paragraph are \$100,000 per person/\$300,000 per accident. The cross reference back to Minn. Stat. § 65B.48 is a reference to the mandatory minimum residual liability coverages required by Minnesota law. Consequently, to satisfy the minimum insurance requirements of Minn. Stat. 65B.48, a car rental company like Enterprise must provide \$100,000/\$300,000 in coverage, not, as it asserts, \$30,000/\$60,000. Johnson v. Americar Rental Systems, 613 N.W.2d 773 (Minn. App. 2000).

Enterprise may argue that the Legislature did not specifically tie the increased limit to the mandatory insurance requirement of Minn. Stat. § 65B.48. However, even if the Legislature was somewhat inarticulate in expressing itself, the role of the Court in interpreting statutes is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2006); Granville v. Minneapolis Public Schools, Special School District No. 1, supra 732 N.W.2d at 206. When doing so, “words and sentences are to be understood in no abstract sense, but in the light of their context, which communicates meaning and color to every part.” Supra, Christensen v. Hennepin Transp. Co., 10 N.W.2d at 415. The intent of the Legislature is clear: setting a separate minimum liability insurance requirement for rental vehicle owners, which limit is higher than the general limit applicable to vehicles which are not rented to strangers.

The Minnesota liability insurance scheme required Enterprise, as the owner of a rented vehicle involved in an accident in Minnesota, to have in effect liability insurance or self-insurance up to the amounts set forth in Section 65B.49, Subd. 5a(i)(2), namely \$100,000 per accident and \$300,000 per person (now \$115,000/\$350,000). Preemption, of course, does not occur unless Congress' intention is "clear and manifest." Rice v. Santa Fe Elevator Corp., *supra*. There is, in fact, a "presumption against preemption." Dahl v. R.J. Reynolds Tobacco Co., *supra*. As such, Minnesota's law requiring at least \$115,000/\$350,000 in liability insurance coverage is exempt from the federal preemption of the Graves Amendment, as it squarely fits within Subsection (b) of § 30106, as a state adopted "insurance standard."

G. Businesses Renting Motor Vehicles to Others are also Subject to State Liability Insurance Requirements.

Furthermore, subsection (b)(2) of the Graves Amendment expressly preserves state laws that "impos[e] liability on business entities engaged in the trade or business of renting or leasing motor vehicles" who have "fail[ed] to meet the[ir] financial responsibility **or** liability insurance requirements under State law." 49 U.S.C. § 30106(b)(2) (emphasis added). Under the plain language of subsection (b)(2), entities engaged in the trade or business of renting or leasing motor vehicles, such as Enterprise here, are subject to state laws that impose liability for failing to meet their state law financial responsibility or insurance requirements – in other words, for failing to meet their obligation as owners to be able to respond to damages following a motor vehicle accident in order to ensure that compensation is available to motor vehicle accident

victims. See, 60 C.J.S. Motor Vehicles § 223 (stating that the purpose of state financial responsibility laws is to “induce motor vehicle owners or operators to provide security for the compensation of innocent persons who are injured, in person or property, through the faulty operation of the motor vehicle.”). Accord, Christensen v. Hennepin Transp. Co., Supra 10 N.W.2d at 415.

In the District Court, Enterprise argued that subsection (b)(2) did not apply to the situation because it had \$2 million in self-insured liability insurance coverage in effect, as well as layers of additional liability insurance coverage above the self-insured limit. Enterprise argued that having that amount of insurance “in effect” complied with its statutory obligations under Minnesota law.

However, while Enterprise may have had limits of that nature “in effect” on paper, they were illusory, because, according to Enterprise, it was only required to provide \$30,000 per person/\$60,000 per accident in available protection for the permissive user of Enterprise’s motor vehicle, and it was exempt from vicarious liability above the 30/60 level of coverage by virtue of the federal preemption of the Graves Amendment. However, if only \$30,000/\$60,000 of “self insurance or insurance” limits are available to the victims, then Enterprise has clearly failed to meet its state law financial responsibility/insurance coverage obligation under Minnesota law where that obligation is set, by statute, at \$115,000 per person/\$350,000 per accident.

As a matter of statutory interpretation, the argument advanced by Enterprise was rejected by this Court in Johnson v. Americar Rental Systems, 613 N.W.2d 773 (Minn.

App. 2000). In Johnson, a rental car owned by Americar was driven by plaintiff's husband, who ran a STOP sign and collided with another vehicle. Johnson was severely injured. National Casualty Company insured the Americar vehicle, with a bodily injury liability limit of \$1,000,000. The policy also purported, however, to limit the available liability insurance coverage to \$30,000 per person/\$60,000 per occurrence if a renter was driving the insured vehicle at the time of the accident. This court concluded that Americar was responsible "for a total of \$105,000, as required by law (Minn. Stat. § 65B.49, Subd. 5a(i)(2))." Id. at 778.

The situation is the same in the instant case. Enterprise, like Americar in Johnson, concedes it owed \$30,000/\$60,000 (in fact, that amount has already been deposited with the district court) (Petition to Deposit Funds, A, 49-52). What it disputes is whether or not it is also responsible for another \$85,000/\$290,000 (for a total of \$115,000 per person/\$350,000 per accident), as required by Minn. Stat. § 65B.49, Subd. 5a(i)(2). Under this court's interpretation of that statute in Johnson, Enterprise is responsible for that additional amount.

With respect to the application of the Graves Amendment, Enterprise can't have it both ways: either there is \$115,000 per person/\$350,000 per accident in available self-insurance coverage to be paid to the victims, or there is not. If there is not, Enterprise has failed to meet the minimum insurance obligation imposed by Minnesota law on rental vehicle owners and Enterprise's vicarious liability is not preempted by the Graves Amendment.

In short, statutes like Minnesota's requiring the rental car owner to provide liability limits of \$100,000 per person/\$300,000 per accident are not "clearly and manifestly" intended to be preempted, but are rather specifically exempted from preemption by Subsection (b) of § 30106.

SUMMARY

Congress' stated intention was to preempt unlimited vicarious liability, but not a State's choice of the amount of financial responsibility or minimum insurance requirements that should be applied to motor vehicle rental owners. The capped financial responsibility and/or insurance requirements of Minnesota law clearly fit within the subsection (b) exemption, because Congress left it to the States to determine the amount of that financial responsibility or minimum insurance obligation.

Subsection (b)(1) makes it clear that "**nothing** . . . supersedes the law of any State" where that law is one "imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of . . . operating a motor vehicle (emphasis added)." That is precisely what Minnesota's financial responsibility scheme as set forth in Minnesota Statutes §§ 169.09, Subd. 5a, § 65B.49, Subd. 5a(i)(2), and § 65B.48, Subd. 1 accomplishes. Those statutes, operating together, require that a rental car owner have in effect liability insurance or self-insurance up to \$100,000 per person/\$300,000 per accident (with a small escalator clause) and, if the owner of the rental vehicle has that coverage in effect, then its "owner's financial responsibility" under Minn. Stat. § 169.09, Subd. 5a, is capped at that \$100,000/\$300,000 (now \$115,000/\$300,000) in coverage by

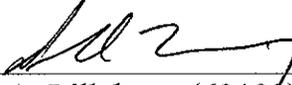
Minn. Stat. § 65B.49, Subd. 5a(i)(2). That is precisely the “financial responsibility” or the “insurance standards” which subsection (b) of 49 U.S.C. § 30106 preserves.

CONCLUSION

Plaintiff respectfully requests that the Judgment be reversed and the matter remanded for further proceedings.

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STATE OF MINNESOTA
IN COURT OF APPEALS

Nancy M. Meyer, as trustee for the
heirs of Margaret Mphosi,
deceased, et al., and Nancy M.
Meyer, as guardian ad litem for
Lucas Mphosi, injured, et al.,

Appellant,

and

Bunmi Obembe, et al.,

Intervenors,

vs.

Bibian Nwokedi,

Defendant,

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

Respondent.

CERTIFICATION OF BRIEF LENGTH

APPELLATE COURT CASE NUMBER: **A08-250**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds.1 and 3, for a brief produced with a proportional font. The length of this brief is 5,636 words. This brief was prepared using Microsoft Word 2002.

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