

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.

REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Argument	1
I. Minnesota Law Imposes a Minimum \$100,000 Per Person / \$300,000 Per Accident (With an Escalator Clause) Insurance Liability Requirement on Motor Vehicle Rental Companies	2
II. Not All Vicarious Liability is Preempted by the Graves Amendment	7
A. Owners Capped Financial Responsibility is Preserved by 49 U.S.C. § 30106(b)	8
B. Enterprise's Failure to Provide \$100,000/\$300,000 in Available Liability Insurance Subjects it to Preserved Vicarious Liability	11
Conclusion	11
Certification of Brief Length	13

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Agency Rent-A-Car v. American Family Mutual Automobile Insurance Company</u> , 519 N.W.2d 483, 486 (Minn. App. 1994)	2
<u>Christensen v. Hennepin Transp. Co.</u> , 215 Minn. 394, 10 N.W.2d 406 (1943)	10
<u>Cooper v. Watson</u> , 290 Minn. 362, 187 N.W.2d 689, 692 (1971)	1, 9
<u>Johnson v. Americar Rental Systems</u> , 613 N.W.2d 773 (Minn. App. 2000)	4, 5, 6, 10
<u>Lambertson v. Cincinnati Corporation</u> , 312 Minn. 114, 125, 257 N.W.2d 679, 686 (1977)	1
<u>Lunderberg v. Bierman</u> , 241 Minn. 349, 63 N.W.2d 355, 360 (1954)	1, 9
<u>Shore v. Minneapolis Auto Auction, Inc.</u> , 410 N.W.2d 862, 864-865 (Minn.App. 1987)	1
<u>State Farm Mutual Automobile Insurance Company v. Universal Underwriters Insurance Company</u> , 625 N.W.2d 160, 163 (Minn. App. 2001)	2
<u>Statutes</u>	<u>Page</u>
49 U.S.C. § 30106	1, 7, 8, 9, 10, 11, 12
Minn. Stat. § 65B.48	5, 6, 8, 11
Minn. Stat. § 65B.49	1, 2, 3, 4, 5, 6, 10, 11
Minn. Stat. § 169.09, Subd. 5a (formerly Minn. Stat. § 170.54)	8, 10
Minn. Stat. § 645.16	3, 6
Minn. Stat. § 645.26	3, 11
1995 Minn. Laws, Ch. 225	2

ARGUMENT

Enterprise's arguments either ignore or nullify the effects of the Legislature's 1995 adoption of Minn. Stat. § 65B.49, Subd. 5a(i), which requires motor vehicle rental owners to provide liability limits of \$100,000 per person/\$300,000 per accident (with an escalator under subsection (3) making the minimum limits applicable to the crash in this case \$115,000.00 per person/ \$350,000 per accident). Furthermore, although agreeing that the Minnesota Supreme Court has repeatedly referred to Minnesota's Safety Responsibility Act as a "Financial Responsibility Act" (Respondent's Brief, pp. 11-12), Enterprise nonetheless asserts that even though it is a financial responsibility or insurance requirements law, the Minnesota statutory scheme is not preserved by the exemption from pre-emption Congress provided in subsection (b) of 49 U.S.C. § 30106 (the "Graves Amendment"). See, Cooper v. Watson, 290 Minn. 362, 366-367, 187 N.W.2d 689, 692 (1971); Lunderberg v. Bierman, 241 Minn. 349, 352, 63 N.W.2d 355, 358 (1954); Lambertson v. Cincinnati Corporation, 312 Minn. 114, 125, 257 N.W.2d 679, 686 (1977); Shore v. Minneapolis Auto Auction, Inc., 410 N.W.2d 862, 864-865 (Minn.App. 1987).

Finally, Minnesota's regulatory scheme for financial responsibility and/or minimum liability insurance requirements for a rental motor vehicle company is different than the statutory framework analyzed by the Courts of other states whose opinions Enterprise provided in its Appendix, and Minnesota's statutory scheme is clearly within the exemption to federal preemption provided by subsection (b) of 49 U.S.C. § 30106.

I. Minnesota Law Imposes a Minimum \$100,000 Per Person/\$300,000 Per Accident (With an Escalator Clause) Insurance Liability Limit Requirement on Motor Vehicle Rental Companies

Enterprise's assertion (Respondent's Brief, pp. 8-9) that the only requirement of Minnesota law is that it provide \$30,000/\$60,000 in liability insurance for a permissive operator of its motor vehicles in Minnesota is wrong. Its argument ignores the effect of the Legislature's 1995 adoption of a specific statute dealing directly with insurance requirements for motor vehicle rental companies, namely Minn. Stat. § 65B.49, Subd. 5a(i). In support of its position, Enterprise cites Agency Rent-A-Car v. American Family Mutual Automobile Insurance Company, 519 N.W.2d 483, 486 (Minn. App. 1994), and State Farm Mutual Automobile Insurance Company v. Universal Underwriters Insurance Company, 625 N.W.2d 160, 163 (Minn. App. 2001) (which quotes from and cites to Agency). Neither are applicable.

Agency was decided in 1994, based upon an accident which happened in 1990, supra 519 N.W.2d at 483, which was before the Legislature's enactment of Minn. Stat. § 65B.49, Subd. 5a(i) in 1995 (1995 Minn. Laws, Ch. 225). State Farm dealt with a garage liability policy, not the owner of a rented motor vehicle. It is Minn. Stat. § 65B.49, Subd. 5a(i), adopted in 1995, that addresses the liability insurance requirements specifically for rental car companies. If, as Enterprise asserts, it was only required to provide \$30,000/\$60,000 in insurance limits, why did the Legislature adopt different, and higher, minimum insurance requirements for rental car companies at all?

The object of all statutory interpretation is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16. “Every law shall be construed, if possible, to give effect to all its provisions.” Id. “When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. Minn. Stat. § 645.26, Subd. 1. If there is a conflict between the two provisions, “the special provision shall prevail and shall be construed as an exception to the general provision....” Minn. Stat. § 645.26, Subd. 1. In the event clauses in the same law are irreconcilable, “the clause last in order of date or position shall prevail ” Minn. Stat. § 645.26, Subd. 2. In the event of a conflict between laws passed at different sessions of the legislature, “the law latest in date of final enactment shall prevail.” Minn. Stat. § 645.26, Subd. 4.

The 1995 amendment to Minn. Stat. § 65B.49, Subd. 5a(i) was enacted to specifically address the financial responsibility requirements of a motor vehicle rental company. Included in that provision were higher liability insurance requirements. The amendment was to Chapter 65B.49, the same Chapter which addresses the dollar amount of the insurance requirements for motor vehicle owners whose vehicles are operated in Minnesota (i.e. Minn. Stat. § 65B.49, Subd. 3). The requirement for higher insurance limits for permissive operators of rental motor vehicles is a “later enactment”, is a “particular” statute addressing insurance requirements for motor vehicle rental companies, and appears “last in order of date or position” in the same section of Minnesota law.

That is the principle that was at issue in Johnson v. Americar Rental Systems, 613 N.W.2d 773 (Minn. App. 2000). Enterprise asserts that Meyer cited the Johnson v. Americar case for the proposition that it had resolved the question of whether or not federal law did or did not preempt all vicarious liability under Minnesota law (Respondent's Brief, pp. 19-20). That is not true. The case was cited for the proposition that this court had construed the effect of Minn. Stat. § 65B.49, Subd. 5a(i), in the context of whether a rental car company was required to provide only a \$30,000/\$60,000 minimum limit, or the higher limits of \$100,000/\$300,000 (with escalator) (Appellant's Brief, pp. 17-18, 20-21). This court rejected Americar's argument that it could, by contract, provide for the lower \$30,000/\$60,000 liability limits. Admittedly, the factual issue in Johnson v. Americar was whether or not the rental car company owner could take advantage of the individual driver's personal policy to escape the higher statutory limit provided in Minn. Stat. 65B.49, Subd. 5a(i). In this case, the individual driver (Nwokedi) had no applicable personal policy.

Yet Enterprise insists that it can still get by with the lower \$30,000/60,000 limit by contract. The principle of Johnson v. Americar is that Americar was required to provide a minimum of \$105,000 bodily injury coverage pursuant to Minn. Stat. § 65B.49, Subd. 5a(i), notwithstanding a contractual clause purporting to provide for a lower limit. This court, in determining the legislative intent in Americar, held that by its 1995 amendments adopting Minn. Stat. § 65B.49, Subd. 5a, the Legislature intended that car rental companies provide the higher limits of insurance as a statutory minimum for permitting

the vehicle to use Minnesota highways. As this court noted in Americar, leaving an injured victim with injuries exceeding the first \$30,000 paid by Americar and the \$100,000 paid on behalf of the drivers personal policy uncompensated “could hardly have been the intent of the Legislature.” Supra, 613 N.W.2d at 778. The conclusion of this court was that a rental car company must provide the minimum limits of Minn. Stat. § 65B.49, Subd. 5a(i), not the \$30,000/\$60,000 limits of Minn. Stat. § 65B.49, Subd. 3.

That is the same principle that should be applied to the instant case, namely that a rental car company providing the minimum required insurance for the privilege of permitting the operation of its motor vehicles in Minnesota must provide not \$30,000/\$60,000 in liability insurance coverage, but the \$100,000/\$300,000 (with the escalator clause) as required by Minn. Stat. § 65B.49, Subd. 5a(i). The Legislature could hardly have intended, by adopting minimum liability insurance standards higher than \$30,000/\$60,000 for car rental companies, to leave the injured victims uncompensated by permitting the car rental company to lower those limits to \$30,000/\$60,000 by a clause in an adhesion contract.

The fact that Minn. Stat. § 65B.49, Subd. 5a(i) and Minn. Stat. § 65B.48 work in tandem to impose a higher minimum limit of insurance on the owner of a rental vehicle is illustrated by the very language of Minn. Stat. § 65B.49, Subd. 5a(i)(2), which cross-references the mandatory insurance requirement of Minn. Stat. § 65B.48, while exempting the rental vehicle owner from greater exposure:

“(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).”

Consequently, the owner of a rented motor vehicle must have a policy of insurance or self-insurance in effect as required by § 65B.48, Subd. 3, but the amount is established not by reference to § 65B.48 statutory language, but by language contained in § 65B.49, Subd. 5a(i)(2), which requires an amount “covering losses up to at least the amount set forth in this paragraph (emphasis added).” Those amounts are \$100,000 per person / \$300,000 per accident, plus the escalator clause of subsection (3).

This tying together of the requirement of mandatory insurance or self-insurance for purposes of either registering or operating a motor vehicle in the state, Minn. Stat. § 65B.48, and the amount of coverage required being higher than the \$30,000/\$60,000 limit, Minn. Stat. § 65B.49, Subd. 5a(i)(2), is a clear indication of the purpose and intent of the Legislature, and fits squarely within the principles enunciated by this court in Johnson v. Americar rejecting the efforts of the rental car vehicle owner to provide only \$30,000/\$60,000 in coverage for vehicles operated in Minnesota. It also squarely fits within the dictates of Minn. Stat. § 645.16 to construe and interpret statutes to give effect to all provisions.

II. Not All Vicarious Liability is Preempted by The Graves Amendment

The fundamental position of Enterprise is that all vicarious liability is preempted by the Graves Amendment, 49 U.S.C. § 30106. If that were true, then subsection (b) would not be part of the statute. Subsection (b) of 49 U.S.C. § 30106 says:

(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).

Clearly, vicarious liability is preserved, particularly by subparagraph (2) above where the business entity renting or leasing a motor vehicle fails to meet either the financial responsibility or the liability insurance requirements imposed by state law.

So the question is: Are Minnesota’s mandatory minimum liability insurance statutes and/or its “capped” owners financial responsibility statute either a “financial responsibility” or a “liability insurance” requirement? The answer is that Minnesota’s laws, when construed and interpreted together, providing for capped owners financial responsibility if minimum liability insurance limits of \$100,000/\$300,000 (with the escalator clause) are provided, are both a financial responsibility law and insurance standards within the exemption to pre-emption.

A. Owners Capped Financial Responsibility is Preserved by 49 U.S.C. § 30106(b)

First and foremost, Minnesota's statutory obligations are imposed upon the rental motor vehicle owner for the privilege of either registering or operating a motor vehicle in Minnesota. Enterprise's argument (Respondent's Brief, pp. 17-19) to the contrary must fail. The statutes provide either minimum financial responsibility on a vehicle renter (capped owner's responsibility) and/or minimum insurance standards on that rental vehicle owner covering its permissive use while on Minnesota highways. Imposing those obligations on the vehicle lessor is done via Minn. Stat. § 65B.48, which says, in part:

“The nonresident owner of a motor vehicle...shall maintain such security in effect continuously throughout the period of operation, maintenance or use of such motor vehicle within this state with respect to accidents occurring in this state....”

Clearly, the requirement for providing liability insurance or self-insurance (i.e. “security”) imposed upon the owner of a rental motor vehicle is, indeed, for the privilege of permitting that vehicle to operate in Minnesota. The nonresident vehicle owner may provide the security required by law by either a policy of insurance or self-insurance in either Minnesota “or the state in which the vehicle is registered or by qualifying as a self-insurer.” Minn. Stat. § 65B.48, Subd. 2.

Likewise, owners responsibility under Minn. Stat. § 169.09, Subd. 5a (formerly Minn. Stat. § 170.54) operates by imposing liability on a motor vehicle owner “whenever any motor vehicle shall be operated within this state....” Contrary to Enterprise's assertion, the obligations of Minnesota law, whether they are insurance requirements or

vicarious liability, are imposed as a condition of operating the subject motor vehicle within Minnesota

Such a scheme clearly comes within the terms of the exemption for preemption provided by 49 U.S.C. § 30106 (b)(1), which says, in part, that “Nothing...supersedes the law of any state...(1) imposing financial responsibility...on the owner of a motor vehicle for the privilege of...operating a motor vehicle.” Subsection (b) of 49 U.S.C. § 30106 expressly preserves “financial responsibility” laws.

Enterprise does not take issue with Meyer’s discussion of what financial responsibility means, nor does it offer a competing view of that term. In fact, it acknowledges that the Minnesota Supreme Court has called its owners responsibility law a financial responsibility law. Lunderberg v. Bierman, 241 Minn. 349, 63 N.W.2d 355, 360 (1954); Cooper v. Watson, 290 Minn. 362, 187 N.W.2d 689, 692 (1971) (parenthetically equating “our financial responsibility act” to the Safety Responsibility Act). Yet its argument that the federal act preempts all vicarious liability fails to give financial responsibility its common meaning and accordingly renders subsection (b) superfluous.

The authorities discussed in Meyer’s Initial Brief explain that financial responsibility laws, commonly understood, impose a duty on owners of vehicles to respond in damages for the purpose of compensating motor vehicle accident victims; and that duty extends to owners through tort law. That is, indeed, Minnesota’s law.

Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 414 (Minn. 1943); Appellant's Brief, pp. 13-16.

In short, financial responsibility and motor vehicle insurance schemes presuppose liability. Owners cannot rid themselves of these statutory duties by contract; in fact, this Court has limited an owners' ability to shift contractually to the driver duties imposed by Minnesota's financial responsibility scheme. See Johnson v. Americar. These schemes are not affected by subsection (a) of the Act: Congress preserved the state financial responsibility laws and motor vehicle insurance regimes as they existed prior to the adoption of subsection (a). Using subsection (a), as Enterprise does, to chip away at and artificially redefine those state statutory regimes ignores Congress' stated intent that nothing in 49 U.S.C. § 30106(a) supersedes existing state financial responsibility and insurance laws applicable to owners and lessors. 49 U.S.C. § 30106(b).

It is clear from the history of the owners financial responsibility statute (Minn. Stat. § 169.09, Subd. 5a), and the Legislature's action at capping the liability of a rental vehicle owner in 1995, that the limited liability of a rental car company imposed by Minn. Stat. § 65B.49, Subd. 5a(i) is a "financial responsibility law" and fits squarely within the exemption to preemption provided by 49 U.S.C. § 30106(b). Enterprise's effort to misconstrue the application of the exemption from preemption and to sweep all vicarious liability into the preempted status must be rejected.

B. Enterprise's Failure to Provide \$100,000/\$300,000 in Available Liability Insurance Subjects it to Preserved Vicarious Liability

If, however, Enterprise is correct that its contract makes available only \$30,000/\$60,000 of its \$2 million in liability and self-insurance coverage, then Enterprise, as the owner of a rental motor vehicle, has failed to comply with Minnesota's mandatory liability insurance minimum for rental car companies of \$100,000/\$300,000 (with escalator). In that situation, then subsection (2) of 49 U.S.C. § 30106 comes into play, and permits the imposition of vicarious liability on a business engaged in renting or leasing motor vehicles because it failed to meet the minimum liability insurance requirements under state law.

CONCLUSION

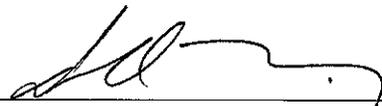
Enterprise's position would make Minn. Stat. § 65B.49, Subd. 5a(i), a nullity. As previously noted, a fundamental rule of statutory construction is that when a general provision of a law conflicts with a special provision "in the same or another law, the two shall be construed, if possible, so that effect may be given to both." Minn. Stat. § 645.26, Subd. 1. That principle of construction squarely applies to the interpretation of the mandatory insurance requirements of Minn. Stat. § 65B.48, which cross-references the dollar limits for those minimum insurance requirements in Minn. Stat. § 65B.49, which in turn cross-references Minn. Stat. § 65B.48 in Minn. Stat. § 65B.49, Subd. 5a(i)(2). To give effect to all provisions of Minn. Stat. § 65B.49, rental car owners must provide at least the \$100,000/\$300,000 limits (with escalator) which the Legislature specifically and clearly adopted in 1995, or a rental vehicle owner has failed to comply with the

mandatory minimum insurance requirements of Minnesota law for a vehicle operated in Minnesota. Enterprise must either provide those limits (in this case \$115,000 per person/\$350,000 per accident), or under the preservation clause of subsection (b) of 49 U.S.C. § 30106, it has failed to meet the minimum financial responsibility requirements of Minnesota law, and remains vicariously liable up to those limits.

Appellant Meyer respectfully requests that the Judgment of the District Court be reversed.

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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 2,829 words. This brief was prepared using Microsoft Word 2002.

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