

State of Minnesota
In Court of Appeals

NANCY M. MEYER, as Trustee for the Heirs of MARGARET MPHOSI,
Deceased, JOSHUA CHAIRO MPHOSI, Deceased, LUCAS MPHOSI, Injured,
JEHOSHOPHAT MPHOSI, Injured, and NANCY M. MEYER as Guardian ad litem for LUCAS
MPHOSI, Injured, and JEHOSHOPHAT MPHOSI, Injured,

Appellant,

and

BUNMI OBEMBE and CHRISTOPHER OBEMBE,
NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES,

Intervenors,

Intervenor,

vs.

BIBIAN NWOKEDI,

Defendant,

and

ENTERPRISE RENT-A-CAR COMPANY OF MONTANA/WYOMING, d/b/a
ENTERPRISE RENT-A-CAR OF THE DAKOTAS/NEBRASKA,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE LEGAL ISSUE

Whether the district court properly granted summary judgment to Respondent Enterprise by holding that federal law abolishes Respondent Enterprise's vicarious liability, thereby preempting Minnesota's vicarious liability laws applicable to rental vehicle owners, where Respondent Enterprise has satisfied the insurance obligations imposed as a condition to vehicle registration and operation.

The Otter Tail County District Court properly granted summary judgment to Respondent Enterprise.

49 U.S.C. § 30106 (2008)

Minn. Stat. § 65B.48 (2008)

Minn. Stat. § 169.09

Minn. Stat. § 65B.49

STATEMENT OF THE CASE

This appeal arises out of a single motor vehicle accident which occurred on June 5, 2004 and resulted in the deaths of Margaret Mphosi and her son Joshua Mphosi, as well as injuries to her sons Lucas Mphosi and Jehoshophat Mphosi. Appellant Nancy M. Meyer (“Appellant”), as Trustee for the deceased and as Guardian ad Litem for the injured minors, commenced an action on or about June 2, 2006 against Bibian Nwokedi, the driver of the motor vehicle, and against Respondent Enterprise Rent-A-Car Company of Montana/Wyoming d/b/a Enterprise Rent-A-Car of Dakotas/Nebraska (“ERAC”), the owner of the motor vehicle. Appellant alleged that ERAC was vicariously liable for Defendant Nwokedi’s negligent operation of the rental vehicle, that ERAC negligently entrusted the rental vehicle to Defendant Nwokedi or others, and that ERAC was otherwise negligent. On or about December 12, 2006, ERAC moved for summary judgment relative to all claims made against it. On April 6, 2007, the Otter Tail County District Court, the Honorable Barbara R. Hanson presiding, granted ERAC’s summary judgment motion as to all claims. Appellant now appeals from that portion of the district court’s summary judgment Order holding that the Graves Amendment to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Safe Users, 49 U.S.C. § 30106, abolishes the vicarious liability of Respondent Enterprise and thereby preempts Minnesota’s vicarious liability laws applicable to rental vehicle owners, such as ERAC.

STATEMENT OF THE FACTS

On June 4, 2004, a thirty-two year old North Dakota man named Maboko Mphosi rented a 2004 Ford Expedition (“the Expedition”) from ERAC in Fargo, North Dakota. See Respondent’s Appendix (“RA”) 022. On June 5, 2004, the Expedition was involved in a single-vehicle accident while traveling east-bound on Interstate 94 near Fergus Falls. Mphosi’s friend, Bibian Nwokedi was operating the vehicle at the time of the accident. See id. Tragically, passengers Margaret Mphosi and her son Joshua Mphosi were killed, while Margaret Mphosi’s other two sons, Lucas Mphosi and Jehoshophat Mphosi, were injured. See id.

ERAC is in the business of renting motor vehicles to customers and is self-insured for the first \$2 million in accordance with North Dakota self-insurance law. See id. at 110. Despite this degree of self-insurance, ERAC contractually limited the amount of liability self-insurance coverage available a permissive user of the Expedition according to rental agreement’s terms. It provides in relevant part that “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.” RA at 023, 024. As a result, ERAC has agreed to make a total payment in the aggregate amount of \$60,000 for all bodily injury motoring liability claims made by all claimants and has deposited that money into court pursuant to Minn.R.Civ.P. 67.01 and 67.02

and pursuant to the Order of the Otter Tail County District Court. See id. at 148-151.

Appellant Nancy M. Meyer (“Appellant”), as Trustee for the deceased and as Guardian ad Litem for the injured minors, commenced an action on or about June 2, 2006 against Bibian Nwokedi, the driver of the motor vehicle, and against ERAC, the Expedition’s owner. See id. at 025-032. Appellant alleged that ERAC was vicariously liable for Defendant Nwokedi’s negligent operation of the rental vehicle, that ERAC negligently entrusted the rental vehicle to Defendant Nwokedi or others, and that ERAC was otherwise negligent. See id. at 028, 029. ERAC moved for summary judgment as to all of those claims. See id. at 001-016.

The district court granted summary judgment as to all claims made against ERAC, including the issue of whether ERAC may be vicariously liable to Appellant for Nwokedi’s negligent operation of the Expedition. See id. at 115-128. ERAC contended below, as it contends on this appeal, that it has no vicarious liability to Appellant as the expedition’s owner, because the Graves Amendment preempts state and local laws imposing vicarious liability on rental vehicle owners who are neither negligent nor criminally culpable. See id. at 003-016, 085-101. Appellant argues on appeal, as she did in the district court, that Minnesota’s vicarious liability laws imposing vicarious liability on motor vehicle owners, such as ERAC, constitute “safety responsibility” standards or “insurance requirements” of a sort which the Graves Amendment saves from preemption. See Appellant’s Brief at 16-22

Appellant appeals only from the district court's determination that ERAC has no vicarious liability. See id. at 1. The Claimants involved in the underlying district court litigation have agreed to dismiss with prejudice all claims in that lawsuit except for the claim that ERAC is vicariously liable for Nwokedi's alleged negligence. See RA at 152-160. If this appeal determines that the Graves Amendment does preempt Minnesota's vicarious liability laws applicable to rental vehicle owners, then the Claimants and ERAC have agreed that ERAC's liability to Claimants will not exceed the \$60,000 ERAC has paid into court. See id. at 140. If this appeal decides that the Graves Amendment does not preempt Minnesota's vicarious liability laws applicable to rental vehicle owners, then the Claimants and ERAC have agreed that ERAC will deposit an additional \$290,000 into court in full satisfaction of the capped vicarious liability ERAC would otherwise have pursuant to Minn. Stat. § 65B.49, subd. 5a(i)(3) (2008). See id. at 141.

ARGUMENT

I. STANDARD OF REVIEW

Appellant appeals from the district court's grant of summary judgment in favor of Respondent ERAC. Their appeal presents a pure legal issue, specifically whether the Graves Amendment abolishes ERAC's vicarious liability to Appellant, thereby preempting State and local laws which impose vicarious liability on rental vehicle owners who are neither negligent nor criminally culpable. Accordingly, this court reviews *de novo* the district court's summary judgment decision. See Lefto v. Hoggsbreath Enterprises, Inc., 581 N.W.2d 855, 856 (Minn. 1998) (applying *de novo* review to a summary judgment involving the application of a statute to undisputed facts).

Summary judgment is properly granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn.R.Civ.P. 56.03 (2008); see also Nicollet Restoration v. City of St. Paul, 533 N.W.2d 845, 847-848 (Minn. 1995) (articulating the summary judgment standard). This court repeatedly has held that summary judgment is appropriate particularly in situations such as the one before the court in this appeal, where the judicial task involves only a question of law. See Auto Owners Insurance Company v. Perry, 730 N.W.2d 282, 284, Minn.App. 2007) (citing Knudsen v. Transp. Leasing/Contract, Inc., 672 N.W.2d 221, 223 (Minn.App. 2003)).

II. ERAC'S LIABILITY IS CONFINED TO THE MINIMUM SELF-INSURANCE OBLIGATION MINNESOTA LAW IMPOSES ON MOTOR VEHICLE OWNERS AS A CONDITION TO MOTOR VEHICLE REGISTRATION AND OPERATION BECAUSE FEDERAL LAW PREEMPTS MINNESOTA LAWS IMPOSING A RENTAL VEHICLE OWNER'S VICARIOUS LIABILITY.

Appellant appeals from the district court's summary judgment, holding that federal law preempts Minnesota law imposing vicarious liability on rental vehicle owners, which means that ERAC's self-insurance obligation is confined to the minimum insurance limits Minnesota law imposes on motor vehicle owners as a condition to motor vehicle registration and operation. Appellant does not argue against the elimination of vicarious liability for rental vehicle owners generally. Rather, Appellant misconstrues Minnesota's vicarious liability laws in order to exempt them from preemption and thereby require ERAC to maintain self-insurance limits equal to or higher than the limits of its capped vicarious liability. Appellant's Brief at 8, 19, 20.

Appellant's argument is incorrect for four reasons. First, ERAC has limited the amount of liability self-insurance available a permissive user of the Expedition according to the terms of the rental agreement Maboko Mphosi signed. Second, the Graves Amendment abolishes the vicarious liability which Minnesota imposes on rental vehicle owners who are neither negligent nor criminally culpable, thereby preempting Minnesota's vicarious liability laws. Third, Minnesota's vicarious liability laws do not survive preemption. Finally, the issue before the

court is one of first impression, which necessarily must be decided in ERAC's favor. Therefore, the district court's summary judgment must be affirmed.

A. ERAC Has Limited The Amount Of Liability Self-Insurance Available To A Permissive User Of The Expedition According To The Rental Agreement's Terms.

Minnesota's legislative scheme of compulsory insurance requires every motor vehicle owner, including every rental vehicle owner, to maintain a plan of reparation security providing residual liability coverage limits not less than \$30,000 per person and \$60,000 per accident as a condition to registering and operating a motor vehicle.¹ See Minn. Stat. §§ 65B.48, subd. 3(1) and 65B.49, subd. 3 (2008). A motor vehicle owner can satisfy that requirement by purchasing an insurance policy or by self-insuring. See Minn. Stat. § 65B.49, subds. 2 and 3; Agency Rent-A-Car v. American Family Mutual Automobile Insurance Company, 519 N.W.2d 483, 486 (Minn.App. 1994). ERAC *itself* is self-insured for the first \$2 million in accordance with North Dakota self-insurance law. See RA at 110. *Renters*, however, are limited contractually to the minimum 30/60 limits required by Minnesota law. See RA at 023, 024; Minn. Stat. §§ 65B.48, subd. 3(1) and 65B.49, subd. 3.

Although self-insurance is the functional equivalent of an insurance policy for the self-insured obligor, see Agency, 519 N.W.2d at 486 (citation omitted), “[t]his court has previously held that a self-insured owner of a motor vehicle may contractually limit liability coverage for a permissive user to the statutory

minimum, while providing a higher coverage limit for the owner.” State Farm Mutual Automobile Insurance Company v. Universal Underwriters Insurance Company, 625 N.W.2d 160, 163 (Minn.App. 2001) (emphasis added and citing Agency, 519 N.W.2d at 487). ERAC did so in this case through its rental agreement, committing the minimum 30/60 limit of liability insurance or self-insurance required by Minnesota law. See RA at 023, 024; Minn. Stat. §§ 65B.48, subd. 3(1) and 65B.49, subd. 3. What this court said in State Farm applies with equal force on this appeal:

As discussed in Agency, the presumptive amount of liability insurance for the permissive driver, absent evidence of limits, was the statutory minimum prior to McClain. After McClain, the presumptive amount, absent any evidence of limits, was coextensive with coverage for the owner. Here, however, the vehicle owner complied fully with its statutory responsibility to provide the required liability coverage for permissive drivers. *The court is not required to presume the limits, because they were clearly stated in the policy to be the minimum amount required by applicable state law.*

State Farm, 625 N.W.2d at 164-165 (emphasis added).

Here, ERAC clearly specified the amount of liability self-insurance available to a renter of the Expedition according to the terms of the rental agreement. ERAC’S self-insured obligation is confined contractually to the minimum 30/60 limit Minnesota law imposes on motor vehicle owners as a condition to motor vehicle registration and operation.

¹ For ease of reference, ERAC refers to this minimum limit as the 30/60 limit.

B. The Graves Amendment Preempts The Vicarious Liability Which Minnesota's Vicarious Liability Laws Impose On Rental Vehicle Owners, Thereby Abolishing Them.

The Graves Amendment abolishes a rental vehicle owner's vicarious liability for harm arising from the use, operation, or possession of the rented vehicle during the rental or lease term. It provides:

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 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).

This provision, by its express terms, abolishes *any and all* vicarious liability of rental vehicle owners who are neither negligent nor criminally culpable² for harm caused by the rental vehicle's use, operation, or possession during the rental or lease.³

² ERAC was neither negligent or criminally culpable. See RA at 124. Therefore, ERAC will not repeatedly emphasize the lack of negligence or criminal culpability.

³ The Graves Amendment does not abolish a rental vehicle owner's vicarious liability under *all* circumstances. Such vicarious liability may arise from the use, operation, or possession of a motor vehicle not being rented or leased. That possibility explains why ERAC is self-insured for the first \$2 million.

Two Minnesota statutes address the issue of a rental vehicle owner's vicarious liability, both of which ERAC refers to collectively as Minnesota's vicarious liability laws. The first of those statutes is Minnesota's Safety (or Financial) Responsibility Act. See Minn. Stat. § 169.09, subd. 5a. It provides:

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. § 169.09, subd. 5a.

This text “was formerly located within the Minnesota Safety Responsibility Act ... at [Minn. Stat. §] 170.54, which was largely repealed in 1974 when the Minnesota legislature enacted the [Minnesota] No-Fault [Liability Insurance] Act.” King v. Liberty Homes, Inc., 508 F.Supp.2d 730, 733 (D.Minn. 2007). For that reason, Minnesota courts have continued to refer to this provision as “the Safety Responsibility Act,” and “the Minnesota Safety Responsibility Act.” See Auto-Owners Insurance Company v. Forstrom, 684 N.W.2d 494, 499 (2004); Ballman v. Brinker, 211 Minn. 322, 323, 1 N.W.2d 365, 366 (1941); White v. White, 676 N.W.2d 682, 683 (Minn.App. 2004); Bates v. Armstrong, 603 N.W.2d 679, 681 (Minn.App. 2000); Great American Insurance Company v. Golla, 493 N.W.2d 602, 603 (Minn.App. 1994). Minnesota courts have also referred to the Safety Responsibility Act as “the Financial Responsibility Act.” See Lambertson v. Cincinnati Corporation, 312 Minn. 114, 125, 257 N.W.2d 679, 686 (1977); 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); Shore v. Minneapolis Auto Auction, Inc., 410 N.W.2d 862, 864-865 (Minn.App. 1987). Regardless of what courts call the provision, the Minnesota Legislature adopted it “to effectuate a legislative policy determining that as between an innocent third party injured by the negligent operation of an automobile and the owner of that automobile who permitted another person to drive it, the owner should bear the cost of the injuries.” Schwalich v. Guenter, 282 Minn. 504, 507, 166 N.W.2d 74, 78 (1969); see also Boatwright v. Budak, 625 N.W.2d 483, 486 (Minn.App. 2001) (reciting the purpose behind the Minnesota Safety [or Financial] Responsibility Act). In Minn. Stat. § 169.09, subd 5a, “[t]he rule of respondeat superior” is “the channel selected by the legislature through which *vicarious liability* of the owner” flows from the permissive operator’s negligent driving conduct. Ballman, 211 Minn. at 323-324, 1 N.W.2d at 366.

The second statute limits a rental vehicle owner’s otherwise unlimited vicarious liability. That statute is Minn. Stat. § 65B.49, subd. 5a(i), which provides in relevant part:

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, which policy of insurance or self-insurance must apply whenever the operator is not covered by a plan of reparation security as provided under paragraph (a); 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.*

Minn. Stat. § 65B.49, subd. 5a(i)(2) (emphasis added).

According to this provision, a rental vehicle owner can cap or limit its otherwise unlimited vicarious liability if it maintains a plan of reparation security subject to certain minimum limits, which are adjusted periodically for inflation. See Minn. Stat. § 65B.49, subd. 5a(i)(3). As the last sentence of Minn. Stat. § 65B.49, subd. 5a(i)(2) makes plain, however, the insurance requirement contained in that provision exists only to alter the rental vehicle owner's vicarious by limiting it.

The Graves Amendment abolishes the unlimited vicarious liability that Minn. Stat. § 169.09, subd. 5a, imposes on rental vehicle owners by providing that a rental vehicle owner “*shall not be liable* under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle . . .”. 49 U.S.C. § 30106(a) (emphasis added). In so doing, the Graves Amendment makes no distinction between limited and unlimited vicarious liability. See id. The insuring requirement contained in Minn. Stat. § 65B.49, subd. 5a(i)(2), serves no useful purpose in this circumstance, because it exists *only for the purpose of limiting a rental vehicle owner's otherwise unlimited vicarious liability*, and the Graves

Amendment abolishes *all* vicarious liability that a rental vehicle owner may have. Hence, the Graves Amendment abolishes both a rental vehicle owner's unlimited vicarious liability imposed by Minn. Stat. § 169.09, subd. 5a, and its limited vicarious liability under Minn. Stat. § 65B.49, subd. 5a(i)(2).

The Graves Amendment's abolition of a rental vehicle owner's vicarious liability under State and local law means that the Graves Amendment preempts Minnesota's vicarious liability laws in the case of rental vehicle owners. Federal preemption stems from the Supremacy Clause of the United States Constitution, "which provides that the laws of the United States 'shall be the supreme law of the land . . . anything in the Constitution or laws of any state to the contrary notwithstanding.'" Dahl v. R. J. Reynolds Tobacco Company, 742 N.W.2d 186, 191 (Minn.App. 2007) (quoting U.S. Const. art. VI, cl. 2). Congressional intent is federal preemption's ultimate touchstone. Id. (citing Gade v. National Solid Wastes Management Association, 505 U.S. 88, 96, 112 S.Ct. 2374, 2381 (1992)). Mindful of the presumption against preemption, see Gade, 505 U.S. at 116-117, 112 S.Ct. at 2392-2393, federal preemption "may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." Fidelity Federal Savings & Loan Association v. De la Cuesta, 458 U.S. 141, 152-53, 102 S.Ct. 3014, 3022, (1982) (internal quotations omitted). "[E]ven where Congress has not entirely displaced state regulation in a particular field, state law is preempted when it actually conflicts with federal law. Such a conflict will be found when it

is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.” Schneidewind v. ANR Pipeline Company, 485 U.S. 293, 300, 108 S.Ct. 1145, 1150-1151 (1988) (internal quotations and citations omitted).

Here, ERAC cannot be subject to the Minnesota’s Safety (or Financial) Responsibility Act and simultaneously be protected by the Graves Amendment, which abolishes a rental vehicle owner’s vicarious liability. See Minn. Stat. § 169.09, subd. 5a; cf. 49 U.S.C. § 30106(a). Similarly, a court legitimately cannot obligate ERAC to commit self insurance limits equal to those outlined in the vicarious liability cap, when the Graves Amendment abolishes *any* vicarious liability it may have, be it limited or unlimited. See Minn. Stat. § 65B.49, subd. 5a(i)(2); cf. 49 U.S.C. § 30106(a). Thus, the Graves Amendment preempts both the Minnesota Safety (or Financial) Responsibility Act in the case of rental vehicle owners and Minnesota’s vicarious liability cap applicable only to rental vehicle owners.

C. Minnesota’s Vicarious Liability Laws Do Not Survive Preemption.

The Graves Amendment’s broad preemption of vicarious liability for rental vehicle owners is subject to a savings clause. See 49 U.S.C. § 30106(b). It provides:

Nothing in this section supersedes the law of any State or political subdivision thereof —

(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.

49 U.S.C. § 30106(b).

Thus, two kinds of State and local laws avoid preemption: (1) financial responsibility and insurance standards imposed for the privilege of registering and operating a motor vehicle; and (2) laws which penalize a rental vehicle owner who fails to meet a State's financial responsibility or liability insurance requirements.

The only State law involved in this appeal which imposes financial responsibility or insurance standards on motor vehicle owners for the privilege of registering and operating a motor vehicle is Minn. Stat. § 65B.48, subd. 1, which requires every motor vehicle owner to maintain a plan of reparation security providing "for basic economic loss benefits and residual liability coverage in amounts not less than those specified in section 65B.49, subdivision 3, clauses (1) and (2)." Minn. Stat. § 65B.48, subd. 1. Self-insurance is a form of reparation security. See Minn. Stat. § 65B.48, subd. 3(1). Minnesota's minimum limit for residual liability insurance is \$30,000 per person and \$60,000 per accident. See Minn. Stat. § 65B.49, subd. 3. ERAC has complied with those statutes by self-insuring for the first \$2 million in accordance with North Dakota self-insurance law and by limiting its self-insurance obligation contractually to the minimum

residual liability insurance obligation Minnesota law requires. Because ERAC has complied with those statutes, no one can legitimately contend that ERAC has violated any State or local laws imposing liability on rental vehicle owners for failing to comply with those statutes.

Appellant, nevertheless, argues that Minnesota's vicarious liability laws somehow escape preemption, thereby requiring ERAC to afford greater amounts of self-insurance than it is statutorily and contractually obligated to provide. See Appellant's Brief at 15-18, 19-21. That argument fails, however, when Minnesota vicarious liability laws are examined against the Graves Amendment's savings clause.

1. The Minnesota Safety (or Financial) Responsibility Act Does Not Escape Preemption.

Minnesota's Safety (or Financial) Responsibility Act simply imposes vicarious liability on a motor vehicle owner by making the motor vehicle's permissive operator the owner's agent. See Minn. Stat. § 169.09, subd. 5a. It does not impose any "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); cf. Minn. Stat. § 169.09, subd. 5a. Minnesota's Safety Responsibility Act also does not constitute a State or local law which penalizes a rental vehicle owner for failing to comply with the State's financial responsibility or insurance requirements. See 49 U.S.C. § 30106(b)(2); cf. Minn. Stat. § 169.09, subd. 5a. It is merely a vicarious liability statute which the Graves Amendment preempts.

Any argument to the contrary renders the Graves Amendment's abolition of a rental vehicle owner's vicarious liability meaningless. Therefore, Appellant's argument that the Minnesota Safety (or Financial) Responsibility Act somehow escapes preemption and imposes a greater self-insurance obligation on ERAC is without merit.

2. The vicarious liability cap applicable to rental vehicle owners also does not escape preemption.

Minnesota's vicarious liability cap available to rental vehicle owners who maintain specified minimum limits of insurance or self-insurance simply limits a rental vehicle owner's otherwise unlimited vicarious liability. See Minn. Stat. § 65B.49, subd. 5a(i). It does not impose any safety responsibility or insurance standards on motor vehicle owners "*for the privilege of registering and operating a motor vehicle.*" 49 U.S.C. § 30106(b)(1) (emphasis added); cf. Minn. Stat. § 65B.49, subd. 5a(i). Minnesota's vicarious liability cap available to rental vehicle owners also does not constitute a State or local law which penalizes a rental vehicle owner for failing to comply with the State's financial responsibility or insurance requirements. See 49 U.S.C. § 30106(b)(2); cf. Minn. Stat. § 65B.49, subd. 5a(i). Rental vehicle owners who fail to comply with its minimum insurance or self-insurance requirement are subjected to unlimited vicarious liability, which the Graves Amendment abolishes. See Johnson v. Americar Rental Systems, 613 N.W.2d 773, 776 (Minn.App. 2000); 49 U.S.C. § 30106(a). ERAC, who has \$2 million in self-insurance, has not failed to comply with Minnesota's minimum

insurance or self-insurance requirements for the reasons discussed above. The Graves Amendment also preempts Minnesota's vicarious liability cap for the reasons discussed here. Therefore, Appellant's argument that the vicarious liability cap somehow escapes preemption and imposes a greater self-insurance obligation on ERAC likewise is without merit.

D. The Issue Before The Court Is One Of First Impression Which, Based On The Foregoing Arguments, Necessarily Must Be Decided In ERAC's Favor.

Appellant asserts that this court in Johnson rejected the argument ERAC is making here. See Appellant's Brief at 21. That assertion is unfounded. In Johnson, Americar argued that its vicarious liability exposure could be "satisfied" by payments from other insurance obligors. See Johnson, 613 N.W.2d at 777. This court rejected Americar's argument, holding that Minn. Stat. § 65B.49, subd. 5a(i)(2) limits a rental vehicle owner's vicarious liability and holding that the layer of coverage paid by the renter's own insurance could not diminish the rental vehicle owner's vicarious liability obligation as that coverage was based upon the renter's active fault. See id.

ERAC is not arguing, as Americar did in Johnson, that it can partially satisfy its vicarious liability through the renter's personal liability coverage. Rather, ERAC argues that it has no vicarious liability to Appellant, because the Graves Amendment has abolished whatever vicarious liability it otherwise would have had to Appellant under Minnesota law, thereby preempting Minnesota's vicarious liability laws as they might otherwise apply to rental vehicle owners who

are neither negligent nor criminally culpable. Neither this court, nor the Minnesota Supreme Court, has addressed that question previously. Appellant's argument to the contrary must be rejected as a matter of law.

As discussed above, Appellant wishes to have this court reverse the district court's summary judgment by having this court believe that Minnesota's vicarious liability laws are saved from the Graves Amendment's broad preemption despite the fact that they impose vicarious liability on a rental vehicle owner who is neither negligent nor criminally culpable, something the Grave Amendment forbids. See 49 U.S.C. § 30106(a), and Minn. Stat. § 65B.49, subd. 5a(i). For all the reasons noted above, that effort must fail. If it does not, the Graves Amendment's savings clause will swallow its preemption clause. Therefore, ERAC respectfully asks this court to affirm the district court's grant of summary judgment.

CONCLUSION

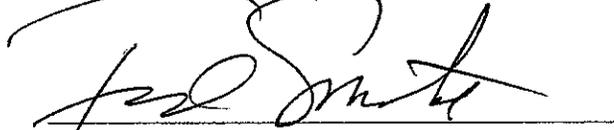
Minnesota law imposes vicarious liability on rental vehicle owners through two statutes. One imposes vicarious liability on all motor vehicle owners by making the permissive user the owner's agent. The other caps a rental vehicle owner's vicarious liability upon condition to maintaining reparation security meeting certain minimum coverage limits. The Graves Amendment abolishes all vicarious liability of rental vehicle owners, thereby preempting Minnesota's vicarious liability laws applicable to rental vehicle owners. The express language and operation of Minnesota's vicarious liability laws precludes them from

surviving preemption under the Graves Amendment's savings clause. As a result, ERAC's liability to Appellant is limited to the minimum residual liability limits Minnesota law imposes to registering and operating the motor vehicle. Therefore, the district court's summary judgment must be affirmed.

Respectfully submitted,

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Dated: 4/2/08



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STATE OF MINNESOTA
IN COURT OF APPEALS

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

Court of Appeals File No.: A08-250
Trial Court Case No.: C7-06-1355
Judgment Entered: December 14, 2007

Appellant,

and

Bunmi Obembe and Christopher
Obembe,

Intervenors,

and

North Dakota Department of
Human Services,

Intervenor,

vs.

Bibian Nwokedi,

Defendant,

and

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

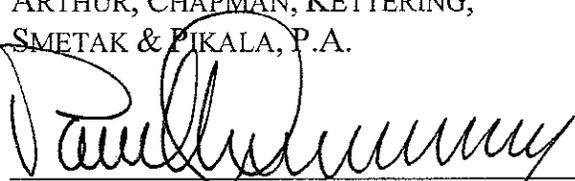
Respondent.

**CERTIFICATION OF
BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn.R.Civ.App.P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 4,797 words. This brief was prepared using Microsoft Word 2003.

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Dated: 4/2/08



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