



NO. A08-250
State of Minnesota
In Supreme Court

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

Appellant,

and

Bunmi Obembe and Christopher Obembe,

Intervenors,

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 ISSUES

In a case concerning a car accident caused by the driver of a rental car that is self-insured by its owner, Respondent Enterprise Rent-A-Car Co., with a policy limit of \$2,000,000, the question presented is:

Whether 49 U.S.C. § 30106 (2006) preempts provisions of Minnesota's No-Fault and Safety Responsibility Acts—specifically, Minnesota Statute §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a (2006)—insofar as they require rental car owners to provide residual liability coverage in the specific amounts prescribed by § 65B.49, subd. 5a(i)(2).

The Court of Appeals held that 49 U.S.C. § 30106(a) preempts both Minnesota Statute §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a. In so holding, the Court of Appeals rejected Appellant Nancy M. Meyer's argument that Congress intended, through the federal Act's savings clause, 49 U.S.C. § 30106(b), to preserve these state laws from preemption. Its opinion (Add. 1-5) is reported at 759 N.W.2d 426 (Minn. App. 2009).

Relevant Cases: *Progressive Specialty Ins. Co. v. Widness*, 635 N.W. 2d 516 (Minn. 2001); *Hertz Corp. v. State Farm Mut. Ins. Co.*, 573 N.W.2d 686 (Minn. 1998); *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246 (Minn. 1998).

Relevant Statutes: 49 U.S.C. § 30106 (2006); Minn. Stat. § 65B.49, subd. 5a (2006); Minn. Stat. § 169.09, subd. 5a (2006).

STATEMENT OF THE CASE

The issue in this appeal arises out of a single-vehicle car accident in which two people were killed and two minors were injured when travelling in a car rented to Maboke (Sam) Mphosi and driven by Bibian Nwokedi, with Mr. Mphosi's permission. The accident occurred on June 5, 2004, along I-94 near Fergus Falls, Minnesota. In June

2006, Appellant Nancy M. Meyer, as trustee for the next of kin of the two deceased individuals, and as guardian ad litem for the two injured minors, filed suit against Respondent Enterprise Rent-A-Car Co. (“Enterprise”), which owns the rental car and is engaged in the business of renting motor vehicles (A, 37, Eby Aff. ¶ 3, p. 1, A, 42); and Ms. Nwokedi, the rental car’s permissive driver (Complaint, A, 1-7).

Ms. Meyer, in her Complaint, alleged a negligence claim against the car driver, Ms. Nwokedi; a vicarious liability claim against the car owner, Enterprise; and a direct negligence claim against Enterprise on a negligent entrustment theory (Complaint, A, 2-5). Subsequently, Ms. Meyer dismissed all claims except for her claim against Enterprise in its capacity as the owner of the rental car (Stipulation for Dismissal with Prejudice and Order for Dismissal with Prejudice, filed 12/14/2007). Enterprise moved for summary judgment, contending that 49 U.S.C. § 30106(a) preempts Minnesota Statute §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a, insofar as these laws extend vicarious liability to Enterprise as a car owner engaged in the business of renting vehicles. Ms. Meyer, in response, argued that the federal Act’s savings clause, 49 U.S.C. § 30106(b), preserves from preemption §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a.

The District Court granted Enterprise’s motion for summary judgment. Enterprise, which is self-insured to a limit of \$2,000,000 (Keller Aff., ¶ 5, p. 2, A, 45), agreed to deposit \$60,000 with the District Court pursuant to Minnesota Statute § 65B.49, subd. 3 (Agreement in Principle, A, 54-59). Final Judgment was filed in the District Court on December 14, 2007 (A, 28).

Ms. Meyer appealed. On January 20, 2009, the Court of Appeals affirmed (Add, 1-6) the decision of the District Court (A, 15). It held that 49 U.S.C. § 30106(a) preempts both Minnesota Statute §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a.

This Court granted review on March 31, 2009 (A, 29).

STATEMENT OF FACTS

On June 5, 2004, at approximately 11:16 a.m., Bibian Nwokedi was driving a rented Ford Expedition¹ on I-94 near Fergus Falls, Minnesota (A, 39), when she negligently drove the car off of the road, causing it to roll over and land in the median/ditch (Accident Report, A, 39). Margaret Mphosi and her son Joshua died in the rollover; two of her children, Lucas and Jehoshophat, sustained severe injuries (A, 39-40).²

The car was owned by Enterprise and registered in North Dakota (Eby Aff., p. 1, ¶ 3, A, 42; Vehicle Registration Card, A,46). Enterprise had rented the car to Maboke (Sam) Mphosi on June 4, 2004 (Eby Aff., p. 1, ¶ 2, A, 42; Rental Agreement, A, 37), who, in turn, granted Ms. Nwokedi permission to drive the car. At the time of the accident, Mr. Mphosi who was a graduate student at North Dakota State University and a part-time minister, and his wife Margaret and their sons were travelling with friends to southern Minnesota to perform church work (Statement of Mphosi, A, 34).

¹ The accident report mistakenly identifies the “Expedition” as an “Excursion.”

² Two other passengers, Bumni and Christopher Obembe, were also injured; each intervened in the District Court (Complaint, A, 1; Complaint in Intervention, filed 9/21/2007; Accident Report, A, 39).

The only insurance policy in existence at the time of the accident belonged to Enterprise; it was self-insured with a policy limit of \$2,000,000 (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 being operated—in this case, Minnesota—as follows:

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

However, if the rental 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.

(Rental Agreement, ¶ 6, A, 38). In accordance with the terms of its rental agreement, Enterprise, in the District Court, agreed to indemnify the authorized driver (Ms. Nwokedi) up to the minimum limits required by Minnesota Statute § 65B.49, subd. 3

(Petition to Deposit Self-Insurance Proceeds, ¶¶ 3 and 4, A, 50; Agreement in Principle, Agreement Section ¶¶ 3 and 4, p. 3, A, 55; Add. 4). Thus, it paid into court \$60,000 (A, 49-52; Add. 5). Furthermore, it has agreed to indemnify the authorized driver pursuant to Minnesota Statute §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a, should this Court conclude that Minnesota law requires it to do so. In that event, Enterprise will pay an additional \$290,000.00 into court (Agreement in Principle, Agreement Section, p. 4, ¶ 7, A, 56).

ARGUMENT

1. REVERSAL IS WARRANTED BECAUSE ENTERPRISE IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW BASED ON 49 U.S.C. § 30106

The District Court erred in granting Enterprise's motion for summary judgment based on 49 U.S.C. § 30106. Summary judgment is appropriate if there are no genuine issues of material fact for trial and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *Hertz Corp. v. State Farm Mut. Ins. Co.*, 573 N.W.2d 686, 688 (Minn. 1998). Because the facts are undisputed, this case raises only issues of statutory interpretation, which are questions of law subject to de novo review. *See Hertz Corp.*, 573 N.W.2d at 688; *see also In re Estate of Barg*, 752 N.W.2d 52, 63 (Minn. 2008) ("Whether federal law preempts state law is primarily an issue of statutory interpretation, which we review de novo.").

Upon reviewing de novo the issue whether 49 U.S.C. § 30106(a) preempts Minnesota Statute §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a, this Court should conclude that the federal Act does not preempt or bar these provisions of Minnesota's No-Fault and Safety Responsibility Acts insofar as they require rental car owners such as Enterprise to maintain residual liability coverage on their vehicles of \$100,000 per person and \$300,000 per accident.³ Accordingly, this Court should reverse the judgment of the District Court.

³ These limits are to be adjusted for inflation, making them \$115,000 per person, \$350,000 per accident at the time of this incident. *See* Minn. Stat. 65B.49, subd. 5a(i)(3).

A. 49 U.S.C. § 30106 Does Not Preempt Provisions of Minnesota’s No-Fault and Safety Responsibility Acts Requiring Enterprise To Provide Liability Coverage For Its Rental Cars In the Specific Amounts Set by Minnesota Statute § 65B.49, subd. 5a(i)(2)

49 U.S.C. § 30106 is the single substantive provision of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1144 (Aug. 10, 2005)—an appropriations act which provides funds for transportation projects throughout the United States. Representative Sam Graves introduced § 30106 as an amendment to an appropriations bill, believing that vicarious liability suits burden the leasing industry. Susan Linde Martin, *Commerce Clause Jurisprudence and the Graves Amendment: Implications for the Vicarious Liability of Car Leasing Companies*, 18 U. Fla. J. Law & Pub. Pol’y 153, 164 (2007). The Amendment was adopted without the review of any congressional committee, without express findings, without hearings, without any debate in the Senate,⁴ and with only a 20-minute debate in the House of Representatives. *Id.*; see also 151 Cong. Rec. H1201 (daily ed. Mar. 9, 2005) (statement of Rep. Conyers) (“[T]he issue of preempting state liability is under the jurisdiction of the Committee on the Judiciary, of which I am the Ranking Member, and no hearings have been held to examine the appropriateness of the language which would be included in the legislation should the amendment pass.”).

The Amendment has two operative provisions: a preemption clause, which purports to shield vehicle owners engaged in the business of leasing from state-law

⁴ During a period of morning business, in which senators were permitted to speak on any topic, 151 Cong. Rec. S5433-01, Senator Santorum did make a statement in support of the version of the Amendment passed by the House. See 151 Cong. Rec. S5433-03.

liability for harm caused by its renters or operators, 49 U.S.C. § 30106(a);⁵ and a savings clause, which preserves from preemption state laws:

- (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.

§ 30106(b). Congress did not define “financial responsibility” or “liability insurance requirements” in § 30106; accordingly, such terms are assumed to carry their common meaning. *See Morse v. Republican Party of Va.*, 517 U.S. 186, 254 (1996) (“When words in a statute are not otherwise defined, it is fundamental that they will be interpreted as taking their ordinary, contemporary, common meaning.”) (citations and internal quotation marks omitted).

Commonly understood, financial responsibility laws require the procurement of an insurance policy in minimum amounts specified by statute. *See* 7A Couch on Insurance § 109:68 (3d ed. 2005). These laws “furnish compensation for innocent persons . . . injured by the negligent operation of automobiles” § 109:36; *see Kesler v. Dep’t of Pub. Safety of Utah*, 369 U.S. 153, 165 (1962), *overruled on other grounds by Perez v. Campbell*, 402 U.S. 637 (1971) (discussing evolution of financial responsibility laws).

⁵ The preemption clause, by its terms, does not apply if there is “negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).” *See* 49 U.S.C. § 30106(a)(2). Because Ms. Meyer, in the District Court, dismissed her negligent entrustment claim against Enterprise, § 30106(a)(2) is inapplicable here.

The central issue in this appeal, therefore, is whether certain provisions of the Minnesota No-Fault and Safety Responsibility Acts—specifically, Minnesota Statute §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a—qualify as state-law “financial responsibility” or “liability insurance requirements” for purposes of the federal Act’s savings clause, and thus fall outside the scope of the federal Act’s preemption provision. In the course of delineating the scope of preemption, this Court “must be guided by two cornerstones of [the U.S. Supreme Court’s] pre-emption jurisprudence.” *Wyeth v. Levine*, 129 S. Ct. 1187, 1194 (2009). As stated in *Wyeth*, these are:

First, “the purpose of Congress is the ultimate touchstone in every pre-emption case.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (internal quotation marks omitted); see *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963). Second, “[i]n all pre-emption cases, and particularly in those in which Congress has ‘legislated . . . in a field which the States have traditionally occupied,’ . . . we ‘start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.’” *Lohr*, 518 U.S., at 485 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

Id. (parallel citations and footnote omitted); see *Altria Group, Inc. v. Good*, 129 S. Ct. 538, 543 (2008) (noting that the presumption against preemption applies in express preemption cases) (“If a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress’ displacement of state law still remains.”).

With these operative principles in mind, Appellant Meyer describes first the operation of Minnesota’s No-Fault and Safety Responsibility Acts, as they concern rental

car owners, *see* Minn. Stat. §§ 65B.49, subd. 5a & 169.09, subd. 5a, and then considers their intersection with 49 U.S.C. § 30106.

1. **Minnesota’s No-Fault and Safety Responsibility Acts require rental car owners to maintain liability coverage, and §§ 65B.49, subd 5a(i)(2) and 169.09, subd. 5a are part and parcel of that scheme.**

Minnesota adopted its No-Fault Act in part “to relieve the severe economic distress of uncompensated automobile accident victims.” *Lobeck v. State Farm Mut. Auto. Insur. Co.*, 582 N.W.2d 246, 249 (Minn.1998) (citing Minn. Stat. § 65B.42(1)). In furtherance of this purpose, the No-Fault Act “requires automobile insurers to offer and automobile owners to maintain automobile insurance policies or other pledges of indemnity which will provide prompt payment of specified basic economic loss benefits to victims of automobile accidents *without regard to whose fault caused the accident*[.]” Minn. Stat. § 65B.42(1) (emphasis added). Thus, under the Act, “every Minnesota automobile owner [must] maintain a ‘plan of reparation security,’ with specific, statutorily set minimum benefits, including liability coverage.” *Hertz Corp.*, 573 N.W.2d at 688; *see* Minn. Stat. § 65B.43, subd. 15 (defining plan of reparation security as “a contract, self-insurance, or other legal means under which there is an obligation to pay the benefits described in section 65B.49”).

Enterprise, in the District Court, conceded that the federal Act’s savings clause, 49 U.S.C. § 30106(b), preserves from preemption Minnesota Statute § 65B.49, subd. 3(1). That provision of the No-Fault Act “requires that each [vehicle owner maintain an] insurance policy contain[ing] liability coverage which compensates a third party who is

injured in an automobile accident for which the insured is liable.” *Lobeck*, 582 N.W.2d at 250 (citing Minn. Stat. § 65B.48, subd. 3); *see also Hertz Corp.*, 573 N.W.2d at 689 (holding that rental car owners are required to maintain liability coverage regardless of whether the renter or operator of the rented vehicle is insured). At the time of the accident, Enterprise was self-insured for \$2,000,000, and it submitted this policy in the trial court as evidence that it has complied with § 65B.48, subd. 3(1), which requires liability insurance of not less than \$30,000 per person and \$60,000 per accident for bodily injury. Because the driver of the rental car, Bibian Nwokedi, was not insured at the time of the accident, Enterprise, acting in its capacity as a self-insurer, paid into court the per-accident limit of \$60,000, in accordance with § 65B.48, subd. 3(1).

But Enterprise, through its self-insurance policy, would not provide residual liability coverage to Appellant Meyer in the amounts specified by Minnesota Statute § 65B.49, subd 5a(i)(2)-(3) (\$115,000 per person and \$350,000 per accident, as adjusted for inflation). It argued, and the Court of Appeals agreed, that the liability coverage contemplated by § 65B.49, subd 5a(i)(2) limits the liability exposure of a rental car owner under Minnesota’s Safety Responsibility Act, § 169.09, subd. 5a. (App. 3). But, in their view, these provisions of the No-Fault Act and Safety Responsibility Act do not require rental car owners to maintain residual liability coverage in these amounts to compensate injured third-parties; and even where this coverage is available, the benefits of that coverage do not extend, as a matter of Minnesota law, to third parties injured in an accident caused by a permissive driver.

That is not a correct understanding of Minnesota law. The No-Fault and Safety Responsibility Acts, properly understood, require rental car owners to maintain specific minimum amounts of residual liability coverage to compensate third parties injured in an accident caused by the permissive driver or a rental car. *See Hertz Corp.*, 573 N.W.2d at 689 (stating that the “linchpin” of this statutory scheme “is a requirement that each automobile owner carry liability coverage.”). The insured in this case—Enterprise—must maintain the minimum amounts of residual liability insurance for its rental cars, as specified in Minnesota Statute § 65B.49, subdivision 5a(i)(2)-(3), in order to compensate third parties injured “in an automobile accident for which the insured is liable.” *Cf Lobeck*, 582 N.W.2d at 250 (discussing Minn. Stat. § 65B.48, subd. 3, which establishes residual liability insurance requirements that are generally applicable to vehicle owners).

The text and structure of § 65B.49, subdivision 5a(i)(2)-(3), when considered in conjunction with the No-Fault Act as a whole, demonstrate that this specific provision requires rental car owners to maintain a higher level of minimum residual liability coverage than is ordinarily required of vehicle owners generally under § 65B.48, subdivision 3. The 2007 statutory amendments to § 65B.49, subdivision 5a. (A, 60), moreover, *confirm* that the Minnesota Legislature intended, through this provision, to require rental car owners to maintain reparation security in the amounts specified in § 65B.49, subdivision 5a(i)(2)-(3)—a requirement that is a central feature of the No-Fault Act itself.

a. § 65B.49, subdivision 5a(i)(2) requires rental car owners to maintain residual liability insurance to cover accidents caused by permissive drivers

This Court's task in interpreting § 65B.49, subd. 5a(i)(2)-(3) and related parts of the No-Fault Act is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16; *Granville v. Minneapolis Pub. Sch.*, 732 N.W.2d 201, 206 (Minn. 2007). Because the No-Fault Act is remedial in nature, it is to be liberally construed to accomplish its purposes, *Miklas v. Parrott*, 684 N.W.2d 458, 461 (Minn. 2004), which includes relieving the severe economic distress that arises when automobile accident victims are not compensated, Minn. Stat. § 65B.42(1). In addition, individual provisions of the No-Fault Act are to be ascertained in "conjunction" with the Act as a whole. *See Progressive Specialty Ins. Co. v. Widness*, 635 N.W. 2d 516, 520 (Minn. 2001). As such, if a general provision of the No-Fault Act is in conflict with a special provision in the same Act, "the two shall be construed, if possible, so that effect may be given to both." Minn. Stat. § 645.26, subd. 1 (outlining general principles of statutory construction). But if the conflict is irreconcilable, "the special provision shall prevail and shall be construed as an exception to the general provision unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail." *Id.*; *see also* Minn. Stat. § 645.26, subd. 4 (stating that, as to a conflict between laws enacted at different sessions of the legislature, "the law latest in date of final enactment shall prevail.").

As discussed above, §§ 65B.48 and 65B.49 of the No-Fault Act "require that every Minnesota automobile owner maintain a 'plan of reparation security,' with specific,

statutorily set minimum benefits, including liability coverage.” *Hertz Corp.*, 573 N.W.2d at 687 (citing Minn. Stat. §§ 65B.48, subd. 1 & 65B.49, subd. 3(1)). Subdivisions 3(1) and 3(2) state the minimum reparation security benefits required of owners generally. *See* § 65B.49, subd. 3(1)-(2). In addition, “[e]xcept as provided in subdivision 5a,” subdivision 3(3)(d) addresses the primacy of residual liability insurance insofar as nonowned vehicles that are “borrowed or rented, or used for business or pleasure” are concerned. § 65B.49, subd. 3(3)(d).

Although subdivision 3 governs plans of reparation security applicable to vehicle owners *generally*, the Legislature, in subdivision 5a of § 65B.49, has adopted certain statutory requirements that are *specifically* applicable to reparation security plans for qualifying rental vehicles. *See* § 65B.49, subd. 5a(b) (establishing criteria for when a vehicle is to be considered “rented” for purposes of this subdivision). For instance, subdivision 5a(a)(1) requires that “[e]very plan of reparation security, wherever issued, insuring a natural person as named insured, . . . provide that all of the obligation for damage and loss of use to a rented private passenger vehicle, . . . be covered by the property damage liability portion of the plan.” § 65B.49, subd. 5a(a). The coverage available for property loss of rental vehicles must be \$35,000. § 65B.49, subd. 5a(a).

In addition, subdivision 5a(i)(2) concerns residual liability coverage. It provides:

(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.

§ 65B.49, subd. 5a(i)(2) (2006).

This provision, by its terms, imposes on rental car owners the obligation to maintain “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.” *See id.* Its reference to section 65B.48, subdivision 3 provides a clear sense of the nature of the obligation the Legislature sought to impose on rental car owners acting as insurers:

a continuing undertaking by the owner or other appropriate person *to pay tort liabilities* or *basic economic loss benefits*, or both, *and to perform all other obligations imposed by sections 65B.41 to 65B.71;...*”

§ 65B.48, subd. 3 (emphasis added); *see also* § 65B.48, subd. 2 (stating that “[t]he security required by sections 65B.41 to 65B.71 may be provided by a policy of insurance complying with sections 65B.41 to 65B.71”). That obligation applies to non-resident owners, such as Enterprise, and is “in effect continuously throughout the period

of the operation, maintenance or use of such motor vehicle within this state with respect to accidents occurring in this state. . . .” Minn. Stat. § 65B.48, subd. 1.

The 2007 amendments to section 65B.49, subdivision 5a confirm that the Legislature sought, through paragraph (i), clause (2), to require rental car owners to maintain a plan of reparation security with liability coverage in the specific amounts set forth therein. *See* 2007 Minn. Sess. Law Serv. Ch. 72 (S.F. 744) (West 2007) (A, 60). That year it made several changes to subdivision 5a, in part to “clarify[] rental rented automobile owner obligation[s].” *See* S.F. 744 (“Long Description”), *available at* https://www.revisor.leg.state.mn.us/revisor/pages/search_status/showtheLongD.php?f=S F0744&ls=85 (A, 63). For instance, the legislature added language extending the benefits of a renter’s or permissive driver’s plan of reparation security. *See* S.F. 744 (A, 64) (adding subd. 5a(a)(2)). It also included, in subdivision 5a(a)’s discussion of the primacy of plans of reparation security, an express reference to “paragraph (i), clause (2).” *See* S.F. 744 (A, 64). Regarding paragraph (i), clause (2) itself, the Legislature added the following language (which is italicized below):

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) ;*

S.F. 744 (A, 65) (emphasis added). And it deleted the following language in subdivision 5a(j):

(j) The plan of reparation security covering the owner of a rented motor vehicle is excess of any residual liability coverage insuring an operator of a rented motor vehicle ~~if the vehicle is loaned as a replacement for a vehicle being serviced or repaired, regardless of whether a fee is charged for use of the vehicle, provided that the vehicle so loaned is owned by the service or repair business.~~

S.F. 744 (A, 66).

These amendments appear to respond to this Court's decision in *Hertz Corp.*, which held, based on its view of the No-Fault Act and the application of § 65B.49, subd. 3(3)(d) to the facts before it, that the liability insurance of the rental car agency in that case was primary and its coverage extended, as a matter of the No-Fault Act, to third parties injured by the negligence of a permissive rental-car driver. 573 N.W.2d at 689-91. The Legislature, in an apparent effort to "clarify" rental car owners' insurance obligations, amended subdivision 5a so that in those instances in which a renter of a rental car has his or her own liability insurance coverage, that coverage is primary. See S.F. 744 (A, 64-66); *compare Hertz. Corp.*, 573 N.W.2d at 691 (Page, J., dissenting) ("The court's decision, which allows the renter of a rental car, who has his or her own liability insurance coverage and who declines to purchase the rental car company's liability insurance supplement to escape responsibility for the renter's involvement in an accident with the rental car, is wrong, fundamentally unfair, and poor public policy."). Nevertheless, the amendments make plain that owners are *still* required to maintain reparation security plans, *see* § 65B.49, subd. 5a(i)(2), including residual liability coverage, which is now excess of any such coverage insuring an operator of a motor vehicle, *see* § 65B.49, subd. 5a(j).

The Court of Appeals, however, did not understand § 65B.49, subd. 5a(i)(2) (2006) to require rental car owners to maintain a policy of insurance or self-insurance covering losses up to at least the amounts set forth in this paragraph. *See* Add. 6. Instead, it understood subdivision 5a(i)(2) to limit the liability exposure of a rental car owner *qua* owner under section 169.09, subdivision 5a to \$100,000 per person and \$300,000 per accident if the owner maintains liability coverage in these stated amounts, and if such coverage is in place at the time of the accident.

But subdivision 5a(i)(2), contrary to the Court of Appeal's narrow reading of it, is not *solely* concerned with protecting rental car owners from unlimited liability exposure pursuant to section 169.09, subdivision 5a. Rather, the text of subdivision 5a(i)(2) makes plain that the Legislature *also* sought to address compensation for third parties injured in an accident with a rental car by making available to them the benefits of a rental car owner's liability coverage, up to \$100,000 per person and \$300,000 per accident, as adjusted for inflation. *See* § 65B.49, subd. 5a(i)(2)-(3). These benefits, by definition, "accrue to someone other than the insured—a third party." *Lobeck*, 582 N.W.2d at 250. Moreover, the 2007 amendments confirm that the Legislature views "paragraph (i), clause (2)" as concerning reparation security, because the amendments cross-reference that provision in its discussion, in subdivision 5a(a), of the primacy of coverages. *See* § 65B.49, subd. 5a (2007).

Subdivision 5a(i)(2), therefore, serves two related, but distinct, goals: it limits the liability exposure of rental car owners *qua* owners, *and* it requires an owner's insurer to extend the benefits of residual liability coverage to third parties injured by permissive

drivers. Absent subdivision 5a(i)(2)'s textual command that residual liability coverage extend to third parties "to cover[their] losses up to at least the amounts set forth in this paragraph," the extent of the insurer's liability would be governed by the terms of the contract entered into by the parties. *Am. Family Mut. Ins. Co. v. Ryan*, 330 N.W.2d 113, 115 (Minn. 1983). In that event, a vehicle owner's insurer could contractually provide a lower limit of liability coverage for permissive drivers (i.e., the \$30,000 per person and \$60,000 per accident coverage specified in Minn. Stat. § 65B.49, subd. 3) while maintaining higher limits for named insureds (i.e., the \$100,000 per person and \$300,000 per accident coverage specified in Minn. Stat. § 65B.49, subd. 5a(i)(2)). See *State Farm Mut. Auto. Ins. Co. v. Universal Underwriters Ins. Co.*, 625 N.W.2d 160, (Minn. App. 2001), review denied June 27, 2001 (discussing split-limit coverage); *Agency Rent-A-Car, Inc. v. Am. Family Mut. Auto. Ins. Co.*, 519 N.W.2d 483, 487 (Minn. App. 1994) (same). But subdivision 5a(i)(2) forecloses that possibility because, by its terms, it requires that a rental car owner's insurance policy "cover [third-party] losses up to at least the amounts set forth in this paragraph," even if a permissive driver is solely at fault. Minn. Stat. § 65B.49, subd. 5(i)(2).

For these reasons, the text and structure of § 65B.49, subdivision 5a(i)(2)-(3) (2006), when considered in conjunction with the No-Fault Act as a whole, and when considered in light of the 2007 amendments, demonstrate that this specific provision requires rental car owners to maintain a higher level of minimum residual liability coverage than is ordinarily required of vehicle owners generally under § 65B.48, subd. 3.

2. A fair reading of 49 U.S.C. § 30106 suggests that Minnesota Statute § 65B.49, subd. 5a(i)(2) does not conflict with the federal Act's preemption provision

Contrary to the Court of Appeals' decision, there is no conflict between the scope of the federal Act's preemption provision, properly understood, and Minnesota's No-Fault and Safety Responsibility Acts, insofar as they require Enterprise to maintain liability coverage on its vehicle for the benefit of third parties. *See* Minn. Stat. § 65B.49, subd. 5a(i)(2). Indeed, the federal Act itself, in its savings clause, 49 U.S.C. § 30106(b), expressly disclaims such a conflict by preserving from preemption the traditional authority of states to regulate insurance for rental cars. *See id*; *see also Allen-Bradley Local v. Wisc. Emp. Rel. Bd.*, 315 U.S. 740, 749 (1942) (recognizing the state's "historic powers over such traditionally local matters as public safety and order and the use of streets and highways"); *cf. W. & S. Life Ins. Co. v. State Bd. of Equalization of Cal.*, 451 U.S. 648, 653 (1981) (observing that Congress, in enacting the McCarran-Ferguson Act, declared "that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.").

A careful reading of the savings clause's text, which carves out two exceptions to preemption, against the backdrop of the operative preemption provision, demonstrates that Congress intended, in the second exception, 49 U.S.C. § 30106(b)(2), to preserve state financial responsibility or insurance laws, such as Minn. Stat. § 65B.49, subd. 5a(i)(2), which require rental car owners to maintain insurance coverage for third-party

beneficiaries in specific amounts prescribed by statute. If rental car owners maintain this coverage, then, in the event of an accident, payment to third parties (such as Appellant Meyer) *comes from the insured*, not the owner itself.⁶ As such, there is no conflict with the federal Act's preemption clause. *See* 49 U.S.C. § 30106(a). Moreover, if rental car owners do not maintain this coverage, then states may impose "liability" on them for their failure. *See* 49 U.S.C. § 30106(b)(2).

This reading of the savings clause gives effect to the Act as a whole: states may not impose liability directly on owners who rent vehicles if they are not themselves negligent, 49 U.S.C. § 30106(a), but states may continue to require rental car owners to comply with state-law insurance requirements directly applicable to them as owners. *See* 49 U.S.C. § 30106(b). By contrast, the reading of 49 U.S.C. § 30106 adopted by the Court of Appeals and advanced by Enterprise would effectively eliminate state authority to require rental car owners to comply with state-law insurance requirements directly applicable to them as owners. Add. 5-6 (reasoning that because the federal Act preempts § 169.09, subd. 5a, it necessarily preempts § 65B.49, subd. 5a(i)(2), which, in the Court of Appeal's view, does not require liability coverage, but simply limits the liability exposure of rental cars if such coverage is present at the time of the accident). Indeed, that reading would preclude even the operation of § 65B.48, subd. 3(1), which "requires that each [vehicle owner maintain an] insurance policy contain[ing] liability coverage which compensates a third party who is injured in an automobile accident *for which the*

⁶ This is true even where the rental car owner is self-insured, as is the case here. App. 45; *see McClain v. Begley*, 465 N.W.2d 680, 682 (Minn. 1991) (concluding that "[s]elf-insurance is the functional equivalent of a commercial insurance policy.").

insured is liable.” Lobeck, 582 N.W.2d at 250 (emphasis added) (discussing Minn. Stat. § 65B.48, subd. 3). If States cannot require that the reparation security plan of a self-insured rental car owner provide coverage for third parties injured in an accident caused by the permissive driver of a rental car, because the rental car owner itself, by operation of the preemption provision, cannot be liable for the harms committed by its renters, then States have no mechanism to ensure minimum compensation for third parties, whether for \$60,000 or \$300,000.

Congress plainly did not intend the preemption provision to sweep so broadly, and the savings clause demonstrates its commitment to ensuring that the states may continue to require rental car owners to maintain insurance in the event that a permissive driver causes an accident. *See* 49 U.S.C. § 30106; 151 Cong. Rec. H1202 (statement of Rep. Graves) (stating that “there are no uninsured rental vehicles on the road today,” and suggesting that the states retain authority to ensure minimum “compensation or means of compensation to folks out there who may be harmed”). The Court of Appeals therefore erred in adopting a sweeping construction of 49 U.S.C. § 30106’s preemption provision, which effectively eliminates the very state authority that Congress sought to preserve in the savings clause: the authority to require rental car owners to maintain liability insurance for the benefit of injured third parties irrespective of whether the rental car owners are themselves at fault. *See* 49 U.S.C. § 30106(b).

The Court of Appeals compounded this error by adopting the narrowest possible reading of the subsection (b)(2) of the savings clause—one that appears only to preserve state laws that impose liability for failure to comply with state laws requiring minimum

insurance coverage as a privilege of registering or operating a vehicle, (App. 6) —on the belief that this reading was necessary to further Congress’s general policy of shielding rental car owners from state-law liability. (App. 6) Accordingly, it appears to have understood the phrase “financial responsibility or liability insurance requirements” in § 30106(b)(2) to be limited by the statutory language “privilege of registering and operating a motor vehicle,” which does not appear in § 30106(b)(2), but appears only in § 30106(b)(1). And, based on this reading of the savings clause, it concluded that Minn. Stat. § 65B.49, subd. 5a(i)(2) neither imposes such requirements nor imposes liability for the failure to meet such requirements. (App. 6)

But, as the U.S. Supreme Court has explained, “[a] congressional decision to enact both a general policy that furthers a particular goal and a specific exception that might tend against that goal does not invariably call for the narrowest possible construction of the exception.” *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 440 (2002). And such a construction is easily resistible here, because requiring Enterprise, as a self-insurer, to make available its liability coverage to Appellant Meyer, a third-party beneficiary, up to the amounts specified in Minn. Stat. § 65B.49, subd. 5a(i)(2), even though that provision does not apply as a privilege of registering or operating a vehicle, *does not* conflict with the preemption rule that rental car owners *qua* owners may not be held vicariously liable under state law, *see* 49 U.S.C. § 30106(a).

In addition, the narrow construction of subsection (b)(2) of the savings clause adopted by the Court of Appeals should be resisted because it is generally presumed that where particular language is included in one section of a federal statute but omitted from

another, Congress has acted intentionally and purposely in its exclusion. *Russello v. United States*, 464 U.S. 16, 23 (1983). Subsection (b)(2) of the savings clause, by its terms, does not limit the universe of financial responsibility or insurance requirements that rental car owners may be required to comply with in order to escape “liability” for non-compliance to those state laws applicable solely as a privilege of registration or ownership. *See* 49 U.S.C. § 30106(b)(2). And there is no reason to read that limitation into subsection (b)(2).

The U.S. Supreme Court’s decision in *Russello* is instructive. There the Court considered “whether profits and proceeds derived from racketeering constitute an ‘interest’ within the meaning of [18 U.S.C. § 1963(a)(1)] and are therefore subject to forfeiture.” *Id.* at 20. The Court noted that several lower courts had narrowly construed the term “interest” in § 1963(a)(1) because Congress had qualified the term in the succeeding subsection (a)(2); whereas “[subsection (a)(1)] speaks broadly of ‘any interest . . . acquired,’ . . . [subsection (a)(2)] reaches only ‘any interest in . . . any enterprise which [the defendant] has established[,] operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.’” *Id.* at 23. The Court, however, “refrain[ed] from concluding [] that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.” *Id.* It explained:

“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972).

See United States v. Wooten, 688 F.2d 941, 950 (4th Cir. 1982). Had Congress intended to restrict § 1963(a)(1) to an interest in an enterprise, it presumably would have done so expressly as it did in the immediately following subsection (a)(2). *See North Haven Board of Education v. Bell*, 456 U.S. 512, 521 (1982); *United States v. Naftalin*, 441 U.S. 768, 773-774 (1979).

Russello, 464 U.S. at 23 (parallel citations omitted).

Therefore, in accordance with the principles of statutory interpretation described in *Russello*, the differing language in the two subsections of the Graves Amendment's savings clause should not be given the same meaning,⁷ otherwise, subsection (b)(2) becomes mere surplusage. Had Congress intended to restrict subsection (b)(2) to those financial responsibility or insurance laws that apply as a condition of registration, it would have done so expressly as it did in subsection (b)(1).

Lastly, consideration of the presumption against preemption supports Appellant Meyer's view that the narrow construction adopted by the Court of Appeals does not fairly reflect Congress's intent. The presumption applies with particular force in those instances in which Congress has legislated in a field which the States have traditionally

⁷ Furthermore, that reading is supported by Congress's use of the disjunctive "or" to decouple subsections (b)(1) and (b)(2), thus indicating that a financial responsibility law need not satisfy both the language of (b)(1) and (b)(2) to be preserved from preemption. *See F.C.C. v. Pacifica Found.*, 438 U.S. 726, 739-40 (1978) (noting that the rule of statutory construction that courts are obliged to give effect, if possible, to every word Congress uses, applies particularly where Congress sets words or phrases apart using the disjunctive "or," which indicates that each has separate meaning).

occupied, as is the case here, and it counsels against adopting an unduly narrow reading of the federal Act's savings clause.⁸

For these reasons, this Court should conclude that the federal Act's savings clause preserves state laws that require entities engaged in the business of leasing to maintain insurance for the benefit of accident victims and extend those benefits to third parties even if the permissive driver is solely at fault. That reading best reflects the careful balance Congress struck between shielding rental car owners from liability, and preserving the States' traditional authority to require car owners to maintain minimum liability coverage for the benefit of third parties injured in accidents caused by permissive drivers.

3. Minnesota Statute § 65B.49, subd. 5a(i)(2) is a qualifying financial responsibility or insurance requirement for purposes of the federal Act's savings clause, 49 U.S.C. § 30106(b)(2)

Given that 49 U.S.C. § 30106(b)(2), properly understood, preserves state laws requiring entities engaged in the business of leasing to maintain liability insurance for the benefit of accident victims even where the permissive driver is solely at fault, there is no question that Minnesota Statute § 65B.49, subd. 5a(i)(2) is such a qualifying law. As discussed above, subdivision 5a(i)(2) plainly imposes a distinct requirement on owners to maintain residual liability insurance and to extend the benefits of that coverage to third parties even where a permissive driver is solely at fault.

⁸ The Court of Appeals did recognize that preemption is disfavored, (App. 3), but it otherwise did not discuss the presumption against preemption, see *id.*, and it is therefore fair to assume that the presumption did not materially factor into the Court of Appeal's preemption analysis, as it should have.

Even if the federal Act's preemption provision supersedes § 169.09, subd. 5a insofar as that provision, *standing alone*, would extend liability to an rental car owner *qua* owner, subdivision 5a(i)(2)'s *distinct* requirement—that a rental car owner's insurance policy cover third-party losses up to at least the amounts set forth in this paragraph if a permissive driver causes an accident—would continue to apply to rental car owners by operation of the No-Fault Act.⁹ Thus, in this case, Enterprise, in its capacity as a self-insurer, must extend the benefits of its coverage to Appellant Meyer in the amounts specified in subdivision 5a(i)(2)—a provision of the No-Fault Act that is specifically applicable to it.

The No-Fault Act, as construed by this Court, supports that result in this case, because the Act “treat[s a rental car owner acting as a] self-insurer as if it had purchased a policy of auto liability insurance for each of its vehicles with itself as the named insured. Such a policy, if purchased, would contain an omnibus clause extending coverage to permissive drivers *as additional unnamed insureds.*” *McClain v. Begley*, 465 N.W.2d 680, 682 (Minn. 1991) (Simonett, J., concurring) (emphasis added). Based on that view of the No-Fault Act, this Court in *Hertz Corp.* determined that the reparation security plan of a self-insured rental car owner provides coverage for third parties injured in an accident caused by the permissive driver of a rental car. 573 N.W.2d at 689. It further read the No-Fault Act broadly to require all self-insured car owners to maintain

⁹ To be sure, nothing in the federal Act's savings clause precludes states from enacting financial responsibility or insurance laws that are applicable only to rental car owners. See 49 U.S.C. § 30106(b)(2) (permitting states to impose liability on entities engaged in the business of leasing who fail to meet financial responsibility or insurance requirements imposed by state law).

liability insurance, even though provisions of the No-Fault Act, on their face, did not “require that an automobile owner maintain coverage that is not contingent upon the presence of other coverage.” *Id.* (citing Minn. Stat. §§ 65B.48, subd. 1 & 65B.49, subd. 3(2)). That broad reading, the Court reasoned, was preferable because it advanced the remedial purposes of the No-Fault Act. *See id.*

This Court should similarly construe subdivision 5a(i)(2) of the No-Fault Act to require self-insured car owners to maintain liability insurance for third parties injured in an accident caused by the permissive driver of a rental car. That interpretation finds support in the text and structure of subdivision 5a(i)(2) of the No-Fault Act and related provisions, as discussed above. And, as in *Hertz Corp.*, this reading of the No-Fault Act is preferable because it furthers the Act’s remedial purposes.

Lastly, this reading § 65B.49, subdivision 5a(i)(2) of the No-Fault Act is preferable because it is consistent with the history of third-party liability concepts in Minnesota. That history, which this Court recounted in *Progressive Specialty Insurance Co. v. Widness*, 635 N.W.2d 516, 521 (2001), confirms that the No-Fault Act is commonly understood to require a rental car owner to maintain residual liability insurance for its permissive drivers even when these drivers are solely responsible for accidents. As the Court explained in *Widness*, when the Legislature first enacted the No-Fault Act in 1974, “it repealed much of the previous automobile legislation, which was codified under the Safety Responsibility Act.” *Id.* at 521 (citing Act of April 11, 1974, ch. 408, § 33, 1974 Minn. Laws 762, 786; Minn. Stat. ch. 170 (1974)). For instance, the Legislature repealed a section of the Safety Responsibility Act that provided that the

owner's liability insurance policy would "insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles." *Id.* (quoting Minn. Stat. § 170.40, subd. 2(2) (1971)). But its repeal, this Court concluded, was of no moment because "the same coverage [for permissive drivers of vehicle owners] was provided by the No-Fault Act's residual liability requirement. That is, residual liability must cover the vehicle even if a permissive driver is at fault." *Id.* ("The consent provision of the [S]afety [R]esponsibility [A]ct was retained when the [N]o-[F]ault [A]ct was passed. In spite of the omission of language similar to section 170.40, it seems clear that the mandated [residual liability] coverage is the same as under prior law.") (quoting 1 Michael K. Steenson, *Minn. No-Fault Auto. Insur.* 185 (2d ed. 1999) (alterations in original); see *Hilden v. Iowa Nat. Mut. Ins. Co.*, 365 N.W.2d 765, 769 (Minn. 1985) (recognizing that the "Minnesota No-Fault Act leaves unaltered the basic framework of the law of liability insurance.")). The Court reached that conclusion in part because the Legislature, in enacting the No-Fault Act, had retained Minnesota Statute § 170.54, which provided that "[w]hensoever 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. § 170.54 (now codified at Minn. Stat. § 169, subd. 5a). Section 170.54 of the Safety Responsibility Act, according to the *Wisness* Court, is "[r]elevant to the issue [] of liability coverage for

permissive drivers of others' vehicles" under the No-Fault Act; these provisions of the Safety Responsibility Act and No-Fault Act "taken together provide the legal requirements for coverage of a [rental] vehicle." *Widness*, 635 N.W.2d at 521.

Therefore, in view of the history of third-party liability concepts in Minnesota, the No-Fault Act plainly requires "residual liability [] to cover the vehicle even when the permissive driver is at fault." *Widness*, 635 N.W.2d at 521. Section 65B.49, subd. 5a(i)(2), is part and parcel of the No-Fault Act and, accordingly, should be construed in conformity with that history.¹⁰

For these reasons, this Court should conclude that 49 U.S.C. § 30106 (2006) does not preempt provisions of Minnesota's No-Fault and Safety Responsibility Acts—specifically, Minnesota Statute §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a—insofar as they require rental car owners to provide residual liability coverage in the specific amounts prescribed by § 65B.49, subd. 5a(i)(2)-(3).

CONCLUSION

This Court should reverse the judgment of the district court. Enterprise was not entitled to judgment as a matter of law based on 49 U.S.C. § 30106. Accordingly, this case should be remanded to the district court, in order that Enterprise, as a self-insurer,

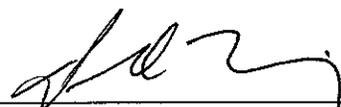
¹⁰ That history also demonstrates that Minn. Stat. § 170.54, now codified at § 169.09, subd. 5a, has been understood to provide persons injured by drivers of non-owned vehicles with greater financial security. See *Christensen v. Hennepin Trans. Co.*, 10 N.W.2d 406, 414 (Minn. 1943); *Hutchings v. Bourdages*, 189 N.W.2d 706 (Minn. 1971); *Lundberg v. Bierman*, 241 Minn. 349, 63 N.W.2d 355, 360 (Minn. 1954) (liability for fault of permissive user "imposed...by our Financial Responsibility Act").

may make available the benefits of its liability coverage to Appellant Meyer, in the amounts stated in Minnesota Statute § 65B.49, subd. 5a(i)(2)-(3).

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Dated: April 30, 2009

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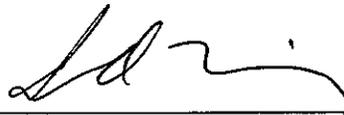
STATE OF MINNESOTA
IN SUPREME COURT

<p>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,</p> <p>and Bunmi Obembe, et al., Intervenors,</p> <p>vs.</p> <p>Bibian Nwokedi, Defendant,</p> <p>Enterprise Rent A Car Co. of Montana/Wyoming, d/b/a Enterprise Rent A Car of the Dakotas/Nebraska, Respondent.</p>	<p>CERTIFICATION OF BRIEF LENGTH</p> <p>APPELLATE COURT CASE NUMBER: A08-250</p>
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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 8,419 words. This brief was prepared using Microsoft Word 2002.

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