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**State of Minnesota**  
**In Supreme Court**

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,  
*Intervenors,*

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES,  
*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*

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**RESPONDENT'S BRIEF, ADDENDUM AND APPENDIX  
OF ENTERPRISE RENT-A-CAR COMPANY OF MONTANA/WYOMING  
D/B/A ENTERPRISE RENT-A-CAR OF DAKOTAS/NEBRASKA**

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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 federal law preempts Minnesota laws imposing vicarious liability on rental vehicle owners *as owners* for accidents occurring during the rental period, where the rental vehicle owner has satisfied the minimum insurance/self-insurance obligations imposed as a condition to vehicle registration and operation.

*The Minnesota Court of Appeals, affirming the summary judgment of the Otter Tail County District Court, held that federal law preempts those laws.*

49 U.S.C. § 30106 (2009)

Minn. Stat. § 65B.48 (2009)

Minn. Stat. § 65B.49

Minn. Stat. § 169.09

## STATEMENT OF THE CASE

Appellant Nancy M. Meyer (“Appellant”), as Trustee for Margaret Mphosi and her son Joshua Mphosi, and as Guardian ad Litem for Lucas Mphosi and Jehoshophat Mphosi, commenced this action on or about June 2, 2006 against Bibian Nwokedi and against Respondent Enterprise Rent-A-Car Company of Montana/Wyoming d/b/a Enterprise Rent-A-Car of Dakotas/Nebraska (“ERAC”). Specifically, Appellant alleged that: (1) Nwokedi negligently operated a motor vehicle rented from ERAC, (2) ERAC was vicariously liable for the deaths and injuries caused by Nwokedi’s negligent operation of that vehicle, (3) ERAC negligently entrusted the rental vehicle, and (4) Nwokedi and ERAC were negligent generally. 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 made against ERAC. In granting summary judgment in ERAC’s favor, the district court specifically held that federal law preempted Minnesota laws imposing and limiting the vicarious liability of rental vehicle owners as owners for accidents occurring during the rental period. Appellant appealed to the Minnesota Court of Appeals only from that portion of the district court’s summary judgment which held ERAC’s vicarious liability to be preempted. On January 20, 2009, the Minnesota Court of Appeals affirmed the district court’s summary judgment, holding that federal law preempts the vicarious liability of rental vehicle owners as owners for accidents occurring during the rental period. See

Meyer v. Nwokedi, 759 N.W.2d 426 (Minn.App. 2009). Appellant now appeals from that decision.

### **STATEMENT OF THE FACTS**

On June 4, 2004, Mboko Mphosi rented a 2004 Ford Expedition from ERAC in North Dakota. The next day, on June 5, 2004, Mphosi's friend, Bibian Nwokedi was involved in a single vehicle accident while operating the rental vehicle in Minnesota, killing Mphosi's wife Margaret and their son Joshua, and injuring the Mphosis' other two sons Lucas and Jehoshophat. See Respondent's Addendum at 005. That accident resulted in a variety of claims by Appellant as well as Plaintiffs by Intervention Bunmi Obembe and Christopher Obembe (referred to collectively as "Claimants"). See Respondent's Appendix ("RA") at 017-024.

ERAC, as the owner and self-insurer of the rental vehicle, committed its self-insured obligation for bodily injury arising from the ownership, maintenance, and use of the rental vehicle to be \$30,000 per person and \$60,000 per accident for bodily injury. See id. at 011, ¶ 3. ERAC further committed that, as self-insurer, it was obligated to defend and indemnify the renter and/or driver for bodily injury claims under the laws of North Dakota or Minnesota. See id. at 011, ¶ 4. Claimants and ERAC ultimately reached an Agreement in Principle, which resulted in the settlement under Drake v. Ryan principles<sup>1</sup> of any and all claims against Mr. Mphosi, the renter, as well as any and all

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<sup>1</sup> This type of settlement agreement takes its name from this Court's decision in Drake v. Ryan, 514 N.W.2d 785 (Minn. 1994). Such a settlement agreement extinguishes that much of the eventual tort judgment as is covered by the primary layer of insurance, and by logical, functional extension, the layer of self-insurance, as well as that much of the

claims against Nwokedi, the driver, and against ERAC,<sup>2</sup> save and except for Appellant's vicarious liability claim. See id. at 012, ¶ 4. The consideration for those settlements was ERAC's payment into court of its \$60,000 self-insured obligation. See id. at 012, ¶ 9. The parties to the settlements agreed and contemplated "that [Appellant] would appeal from the judgment in [ERAC's] favor resulting from the court's summary judgment relative to the vicarious liability issue." RA at 003. As a result of the Agreement in Principle, the layer of liability protection afforded by ERAC would be deemed satisfied, and any judgment eventually obtained against Maboko Mphosi would be satisfied by any personal insurance coverage available to him.<sup>3</sup> See id. at 012, ¶ 4.

ERAC maintains, consistent with the decision of the Minnesota Court of Appeals, that the Graves Amendment to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Safe Users, abolishes ERAC'S vicarious liability and thereby preempts Minnesota's vicarious liability laws applicable to rental vehicle owners, such as ERAC. See Meyer, 759 N.W.2d at 426; 49 U.S.C. § 30106(a) (2009). See id. at 011, ¶ 5. The Agreement in Principle is tailored to preserve only that issue for appeal. See id.

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judgment which is the insured's personal exposure, excess of any collectible insurance. If there is a judgment in favor of claimant and against the insured, then it is "satisfied" subject to the availability of coverage from the non-settling insurance company's policy.

<sup>2</sup> All tort claims against ERAC based upon ERAC's alleged negligence were dismissed with prejudice, leaving only the claim that ERAC had vicarious liability for the operation of the driver. See RA at 003.

<sup>3</sup> For example, the Agreement in Principle expressly states in relevant part: "Claimants contemplate that they may pursue a tort claim against Mboko Mphosi and, in the event of obtaining a judgment with respect to that claim, will restrict satisfaction of any resulting judgment solely to pursuit of any personal insurance coverage providing coverage to Maboko Mphosi, having satisfied that layer of liability protection afforded by Enterprise." RA at 012, ¶ 4.

at 010-016. In it, the parties have even specified the consequences of resolving that specific, narrow issue. If this appeal determines that the Graves Amendment does preempt Minnesota's vicarious liability laws applicable to rental vehicle owners, then ERAC has no tort liability to Claimants. See id. at 013, ¶ 6. 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).<sup>4</sup> See id. at 013, ¶ 7.

## ARGUMENT

### I. STANDARD OF REVIEW

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 (2009); see also Nicollet Restoration v. City of St. Paul, 533 N.W.2d 845, 847-848 (Minn. 1995) (articulating the summary judgment standard). This appeal arises from the decision of the Minnesota Court of

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<sup>4</sup> Appellant misstates the Agreement in Principle by stating that ERAC “has agreed to indemnify the authorized driver pursuant to Minn. Stat. §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a, should this Court conclude that Minnesota law requires it to do so.” Appellant’s Brief at 5. That is not what the Agreement in Principle obligates ERAC to do. ERAC will pay an additional \$290,000 *in full satisfaction of its vicarious liability* should this Court determine that the Graves Amendment does not preempt Minnesota’s vicarious liability laws applicable to rental vehicle owners. See RA at 013, ¶ 7.

Appeals which affirms the district court's grant of summary judgment in ERAC's favor. There is only one legal issue involved in this appeal, namely whether the Graves Amendment abolishes the vicarious liability of rental vehicle owners for accidents occurring during the rental period, where the rental vehicle owner has satisfied the minimum insurance/self-insurance obligations imposed as a condition to vehicle registration and operation. This court reviews *de novo* the decisions of both the Minnesota Court of Appeals and the Otter Tail County District Court. 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).

**II. THE SOLE ISSUE BEFORE THE COURT IS WHETHER THE GRAVES AMENDMENT PREEMPTS MINNESOTA LAWS THAT IMPOSE VICARIOUS LIABILITY ON ERAC FOR THE SUBJECT ACCIDENT.**

The only issue on appeal before the Court is whether the Graves Amendment preempts Minnesota laws imposing vicarious liability on ERAC, a rental vehicle owner, for damages arising from an accident during the rental period. As noted above, the Agreement in Principle is tailored to preserve for appeal only the issue of whether the Graves Amendment preempts ERAC's vicarious liability. 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 has no tort liability. See RA at 013, ¶ 6. 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 013, ¶ 7.

Appellant engages in sophistry by citing two cases involving issues not before this Court. The first of those cases is McClain v. Begley, 465 N.W.2d 680 (Minn. 1982). See Appellant's Brief at 21 n.6, 27. The second is Hertz Corporation v. State Farm Mutual Insurance Company, 573 N.W.2d 686 (Minn. 1998). See id. at 27-28. McClain involved a situation in which a self-insured's automobile rental contract attempted to disclaim any liability coverage by shifting its coverage obligation to the lessee. See McClain, 465 N.W.2d at 682. Hertz involved a situation in which a self-insured rental car company tried to condition its coverage obligation to a situation in which the renter or operator lacked other liability coverage arising from his or her own automobile policy. See Hertz, 573 N.W.2d at 687. Neither case addresses the sole issue before this court, namely, whether the Graves Amendment, enacted many years after both cases were decided on their own narrow issues, preempts Minnesota laws that impose vicarious liability on rental vehicle owners for accidents that arise during the rental period. Therefore, neither McClain nor Hertz are germane to this appeal.

Appellant engages in further sophistry by arguing that ERAC should have paid more than \$60,000 into court, because ERAC is self-insured for as much as \$ 2 million. See Appellant's Brief at 11. That issue also is not before the Court, as evident from various provisions contained in the Agreement in Principle which specify the issue preserved for appeal:

## RECITALS

\* \* \*

5. Claimants' position (not agreed to by Enterprise) is that Minnesota imposes financial responsibility for vicarious liability upon Enterprise despite the passage of the Graves Amendment . . . .
6. Claimants contend that Minnesota imposes financial responsibility upon Enterprise for vicarious liability for bodily injury beyond the level of \$30,000/\$60,000 such that Enterprise should have insurance/self-insurance of \$115,000 per person/\$350,000 per accident for bodily injury damages for its alleged vicarious liability.
7. Enterprise's position (not agreed to by Claimants) is that it has no further vicarious liability for bodily injury claims resulting from the Accident, having complied with both North Dakota and Minnesota mandatory financial responsibility/insurance/self-insurance and upon paying \$60,000 in settlement of claims for bodily injuries (combined).

\* \* \*

11. Claimants wish to appeal the legal issue of whether Enterprise, as self-insured rental vehicle owner, is subject to vicarious liability under Minnesota laws despite passage of the Graves Amendment.

## AGREEMENT

1. Claimants intend and agree to dismiss with prejudice and without costs to any party *any and all claims in this lawsuit against any and all parties*, persons or entities for bodily injury damages arising out of the Accident, *with the exception that the claim of vicarious liability against Enterprise will not be dismissed*, upon Enterprise's payment of the sum of \$60,000 into court.

\* \* \*

6. Claimants and Enterprise also agree that in the event of a final determination on appeal that Enterprise has no vicarious liability for sums beyond the \$60,000, then in that event Claimants, and each of them, will dismiss with prejudice any and all claims against Enterprise.

7. Claimants and Enterprise further agree that in the event of a final determination on appeal holding Enterprise vicariously liable for the accident despite the Graves Amendment, Enterprise will tender, deposit and pay into [the Otter Tail County District Court] an additional \$290,000 in full satisfaction of such vicarious liability claim against Enterprise. Claimants and Enterprise contemplate that, in the event Enterprise is obligated to pay such additional sum, then the court will be asked to divide the proceeds.

RA at 011-013.

These essential provisions of the Agreement in Principle preserve no other issues for appeal, such as whether ERAC should be compelled to extend protection to Appellants in an amount greater than \$60,000.<sup>5</sup> Indeed, the Stipulation for Dismissal with Prejudice expressly provides that the Plaintiffs agree to “dismiss, with prejudice, on the merits and without cost to any party, any and all claims against any and all parties to the above-entitled lawsuit, except for the claim for vicarious liability against [ERAC].” RA at 004. Furthermore, the district court expressly ordered that ERAC would have no further liability as self-insurer covering motoring liability for bodily injury claims resulting from the accident which forms the basis of this action unless Minnesota’s appellate courts determine that vicarious liability exists. See RA at 034, ¶ 2.

In yet a final red herring, Appellant argues that the 2007 amendments to Minn. Stat. § 65B.49, subd. 5a compel reversal of the lower court decisions. See Appellant’s

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<sup>5</sup> ERAC’s rental agreement lawfully limited its self-insured obligation to Minnesota’s minimum limit for residual liability limits are \$30,000 per person and \$60,000 per accident (“the 30-60 limit”). See Minn. Stat. § 65B.49, subd. 3; State Farm Mutual Automobile Insurance Company v. Universal Underwriters Insurance Company, 625 N.W.2d 160, 163-164 (Minn.App. 2001) rev. den’d. (Minn. June 27, 2001); Agency Rent-A-Car, Inc. v. American Family Mutual Automobile Insurance Company, 519 N.W.2d 483, 487-488 (Minn.App. 1994).

Brief at 16-17. Here is a peek behind the proverbial curtain: Appellant's discussion really is geared toward an issue *not* before this Court. That issue specifically is whether the Graves Amendment goes so far as to eliminate a rental vehicle owner's obligation to comply with a state's insurance/self-insurance obligations for the privilege of registering or operating a motor vehicle. That issue also is not before the Court in this action, because ERAC has paid, and Appellant has accepted, \$60,000 as full satisfaction of all but the potential that ERAC has vicarious liability despite the Graves Amendment. Those whose practice is devoted to avoiding the Graves Amendment's limitations throughout the country may make those arguments in cases where that issue arises. Some rental owners in some states also might advance those arguments. Those issues, however, are not issues in this appeal, and there is no reason for this Court to engage in speculation about those issues.

What, then, can be said about the 2007 amendments? One of their purposes is to "reverse the priority" between the liability coverage/self-insurance of an owner of a rental vehicle and an operator, thus effectively disagreeing with and negating Hertz Corporation v. State Farm Mutual Insurance Company, 573 N.W.2d 686 (Minn. 1998). That issue, however, is utterly unrelated to this appeal.

Certainly, the 2007 amendments pose some interesting issues. For example, do the 2007 amendments now obligate an operator's automobile insurance policy, issued in whatever state, to provide Minnesota-type Personal Injury Protection/No-Fault benefits as well as uninsured and underinsured motorist coverage benefits in conformity with Minnesota's laws? If so, are the 2007 amendments constitutional? All those issues are

very interesting, but they are not issues before the Court on this appeal. None of those issues have been raised by any party, and none of them are involved either directly or indirectly in regard to the single issue before this Court, namely whether the Graves Amendment preempts Minnesota laws imposing vicarious liability on rental vehicle owners as owners of the motor vehicle for accidents occurring during the rental period.

**III. THE GRAVES AMENDMENT PREEMPTS MINNESOTA'S VICARIOUS LIABILITY LAWS APPLICABLE TO ERAC FOR ACCIDENTS THAT OCCUR DURING THE RENTAL PERIOD, BECAUSE ERAC HAS SATISFIED THE MINIMUM INSURANCE/SELF-INSURANCE OBLIGATIONS IMPOSED AS A CONDITION TO VEHICLE REGISTRATION AND OPERATION.**

Because the sole issue involved in this appeal is whether the Graves Amendment preempts Minnesota laws imposing vicarious liability on rental vehicle owners, the definition of “vicarious liability” is an appropriate place to begin a discussion of why the Graves Amendment preempts ERAC’s vicarious liability. This Court has defined “vicarious liability” by saying:

Vicarious liability is based on a relationship between the parties, irrespective of participation, either by act or by omission, of the one vicariously liable, under which it has been determined as a matter of policy that one person should be liable for the act of the other. Its true basis is largely one of public or social policy under which it has been determined that, irrespective of fault, a party should be held to respond for the acts of another.

Nadeau v. Melin, 260 Minn. 369, 375-376, 110 N.W.2d 29, 34 (1961) (citing PROSSER, TORTS (2d ed.) c. 12; Laski, *The Basis of Vicarious Liability*, 26 YALE L.J. 105).

Accordingly, vicarious liability is liability arising only due to the relationship existing between the party to be charged and the party whose tortious conduct caused injury.

That relationship is one of agency. Sixty-four years ago, this Court explained how the agency relationship gives rise to vicarious liability by saying:

Under the doctrine of [r]espondeat superior, according to the generally accepted view, vicarious liability to third persons is imposed upon the master for his servant's torts, not because the master is at fault, or because he authorized the particular act, or because the servant represents him, but because the servant is conducting the master's business, and because the social interest in the general security is best maintained by holding those who conduct enterprises in which others are employed to an absolute liability for what their servants do in the course of the enterprise. . . . Where the doctrine of [r]espondeat superior is relied on as a basis for recovery by a third person, the tortious act of the servant committed in the scope of his employment, and not the master's fault or the absence of it in hiring or retaining the servant, is the basis of liability. The master is held liable for the servant's tort.

Porter v. Grennan Bakeries, Inc., 219 Minn. 14, 21, 16 N.W.2d 906, 909-910 (1945) (citations omitted).

Accordingly, vicarious liability does not make the principal responsible for the principal's own torts. Rather, vicarious liability imposes liability on the principal for the agent's torts committed within the course and scope of the agency relationship.

**A. The Minnesota Safety (Financial) Responsibility Act Imposes Vicarious Liability On A Motor Vehicle Owner As Owner For Torts Arising From The Operator's Permissive Use Of The Motor Vehicle.**

Section 169.09, subd. 5a, of Minnesota Statutes is commonly referred to as Minnesota's Safety (or Financial) Responsibility Act.<sup>6</sup> See Minn. Stat. § 169.09, subd.

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<sup>6</sup> This provision, formerly codified at Minn. Stat. § 170.54, is one section of Minnesota's Safety (or Financial) Responsibility Act that survived repeal. In 1974, the Minnesota Legislature repealed much of the Safety Responsibility Act with the exception of this provision when it passed the Minnesota No Fault Automobile Liability Insurance Act. See Progressive Specialty Insurance Company v. Widness, 635 N.W.2d 516, 521 (Minn. 2001). The language of Minn. Stat. § 169.09, subd. 5a, long venerated as § 170.54, is the

5a. It provides 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. § 169.09, subd. 5a. In effect, the sole purpose of this statute is to render the operator the “agent” of the owner. Consequently, Minn. Stat. § 169.09, subd. 5a, makes a motor vehicle owner vicariously liable for torts arising from the operator’s permissive use of the owner’s motor vehicle.

**B. The Graves Amendment Preempts State Laws Imposing Vicarious Liability To Whatever Degree On Rental Vehicle Owners For Accidents During The Rental Period, Subject To Conditions Which Are Not At Issue Here.**

The Graves Amendment preempts state laws imposing vicarious liability to whatever degree on rental vehicle owners. Its preemption clause 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).

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sole and solitary authority by which a vehicle owner *as owner* was made “vicariously liable” for the operator’s negligence by deeming the operator the “agent” of the owner.

This preemption clause, by its express terms, abolishes *any and all* vicarious liability of rental vehicle owners who are neither negligent nor criminally culpable<sup>7</sup> for harm caused by the rental vehicle's use, operation, or possession during the rental or lease.<sup>8</sup>

Appellant and Amicus Curiae Minnesota Association for Justice would have this Court conclude that the Graves Amendment preempts only state laws which impose unlimited vicarious liability on rental vehicle owners for accidents arising during the rental period. See Petition for Review of Decision of Court of Appeals at 1; Brief of Minnesota Association for Justice at 6. The United States Court of Appeals for the Eleventh Circuit considered and rejected that argument just last year in Garcia v. Vanguard Car Rental USA, Inc., 540 F.3d 1242 (11th Cir. 2008). Garcia, although not binding on this Court, is compelling, because it squarely addresses the arguments Appellant raises here in opposition to preemption and represents the most recent, highest level, and most comprehensive decision on the issue of whether the Graves Amendment preempts state laws imposing vicarious liability on rental vehicle owners. See Garcia v. Vanguard Car Rental USA, Inc., ---U.S.---, 129 S.Ct. 1369 (2009) (denying certiorari); see generally Validity, Construction, and Application of Graves Amendment (49

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<sup>7</sup> ERAC was neither negligent nor criminally culpable. See RA at 124. Therefore, ERAC will not repeatedly emphasize the lack of negligence or criminal culpability.

<sup>8</sup> The Graves Amendment does not abolish a rental vehicle owner's vicarious liability under *all* circumstances. Suppose, for example, an ERAC employee operated a motor vehicle owned by ERAC in order to pick up more rental agreement forms from a printer. ERAC would be vicariously liable for its employee's negligence if the employee struck a pedestrian or another vehicle under those circumstances, because the accident would not have occurred during a period of rental or lease. ERAC is self-insured for the first \$2 million to address that kind of circumstance, one not involved in this appeal.

U.S.C.A. § 30106) Governing Rented or Leased Motor Vehicle Safety and Responsibility, 29 A.L.R.Fed.2d 223 (2008).

The appellants in Garcia, (with the involvement of the same counsel “Center for Constitutional Law” as are in the background here) cited statements from the Graves Amendment’s legislative history, where its sponsors expressed concern with “unlimited” vicarious liability. See Garcia, 540 F.3d at 1248. Yet, the Eleventh Circuit observed that “read in context, the statements expressing concern with unlimited vicarious liability do not manifest any approval, explicit or implicit, of limited vicarious liability. More importantly, we see no textual support in the Graves Amendment itself for such a distinction.” Garcia, 540 F.3d at 1248. Indeed, as the Eleventh Circuit stated: “The distinction Congress drew is between liability based on the companies’ own negligence and that of their lessees, not between limited and unlimited vicarious liability.” Id.

The Eleventh Circuit’s approach comports with universal rules governing statutory interpretation. This Court has held that construction is neither necessary nor permitted when legislative intention is clearly manifested by the plain and unambiguous language of a statute. See Lenz v. Coon Creek Watershed District, 278 Minn. 1, 9, 153 N.W.2d 209, 216 (1967) (citing County of Hennepin v. City of Hopkins, 239 Minn. 357, 58 N.W.2d 851 (1953)). Similarly, the United States Supreme Court has held that when courts are called upon to interpret a federal law, they must enforce it according to its terms when the statutory language is plain. See Jimenez v. Quarterman, --- U.S. ---, 129 681, 685 (2009). Instructive in this regard is the rule articulated by Mr. Justice Holmes, which this Court has applied in construing state statutes: “The Legislature has the power

to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed.” Wichelman v. Messner, 250 Minn. 88, 98, 83 N.W.2d 800, 812 (1957) (quoting Johnson v. United States, 163 F. 30, 32 (1st Cir. 1908)).

The Graves Amendment preempts state laws which impose liability on a person or entity who owns rental vehicles for accidents occurring within the rental period merely because that person or entity is the owner of the rented vehicle. No distinction is made between limited and unlimited vicarious liability. Accordingly, the Graves Amendment preempts state laws which impose vicarious liability to whatever degree on a rental vehicle owner. The rule of preemption holds, provided the owner is engaged in the trade of renting motor vehicles and the owner is neither negligent nor criminally culpable for harm caused by the rental vehicle’s use, operation, or possession during the rental or lease, conditions which are not an issue in this action.

**C. The Graves Amendment’s Savings Clause Spares Certain State And Local Laws From Preemption.**

Although the Graves Amendment preempts laws imposing vicarious liability on rental vehicle owners as owners for accidents occurring during the rental period, it contains a clause (“the savings clause”) that preserves certain kinds of state or local “financial responsibility” or “insurance standards” laws from preemption. The savings clause 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.

42 U.S.C. § 30106(b).

According to this plain language, only 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; or (2) laws which impose liability upon a rental business “for failure to meet the financial or liability insurance requirements under State Law.”

Thus, in summary, the Graves Amendment does two things. First, it preempts state and local laws imposing vicarious liability to whatever degree on rental vehicle owners for accidents during the rental period, subject to conditions not at issue here. Second, it saves from preemption state and local laws which either: (1) impose financial responsibility and insurance standards for the privilege of registering and operating a motor vehicle; or (2) impose liability for on rental businesses for failure to meet financial or liability insurance requirements. At this point, an understanding of what the Graves Amendment means by “financial responsibility” is both necessary and essential to understanding why the Graves Amendment preempts Minnesota laws which establish and limit vicarious liability of rental vehicle owners as owners.

**D. The Minnesota State Laws Which Escape Preemption Under The Graves Amendment's Savings Clause Are Not At Issue In This Appeal.**

The Graves Amendment's savings clause does not define the phrase "financial responsibility." See Garcia, 540 F.3d at 1246. Nevertheless, "[t]he ordinary meaning of the words used are presumed to express congressional purpose; thus, absent clearly expressed legislative intention to the contrary, the language is regarded as conclusive." State of Minnesota v. Heckler, 718 F.2d 852, 860-861 (8th Cir. 1983) (citing American Tobacco Co. v. Patterson, 455 U.S. 63, 68, 102 S.Ct. 1534, 1537 (1982)). "Where Congress borrows terms, it presumptively adopts the meaning and 'cluster of ideas' that term has accumulated over time." Garcia, 540 F.3d at 1246-1247 (citing Medical Transport. Mgmt. Corp. v. Comm'r. Internal Revenue Service, 506 F.3d 1364, 1368-1369 (11th Cir. 2007); see also Morrisett v. United States, 342 U.S. 246, 263, 72 S.Ct. 240, 250 (1952) (applying the same rule).

Both provisions of the Graves Amendment's savings clause "strongly imply that financial responsibility is closely linked to insurance requirements: the savings clause exempts from preemption laws 'imposing financial responsibility or insurance standards,'... or laws penalizing the 'failure to meet the financial responsibility or liability insurance requirements under state law.'" Garcia, 540 F.3d at 1247 (quoting 49 U.S.C. § 30106(b)(1) and (2)). The phrase "financial responsibility" commonly refers "to state laws which require either liability insurance or a functionally equivalent financial arrangement." Id. It also may denote "statutes which require owners of motor vehicles to produce proof of financial accountability as a condition to acquiring a license and

registration so that judgments rendered against them arising out of the operation of the vehicles may be satisfied.” BLACK’S LAW DICTIONARY at 631 (6th ed. 1990); cf. Garcia, 540 F.3d at 1248 (citing 15 Russ & Segalla, COUCH ON INSURANCE, §§ 109:34, 109:45-46).

Minnesota has laws imposing 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.<sup>9</sup> That statute 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 bodily injury liability limits are \$30,000 per person and \$60,000 per accident (“the 30-60 limit”). See Minn. Stat. § 65B.49, subd. 3. Such laws escape preemption under 42 U.S.C. § 30106(b)(1), and ERAC does not argue that those laws are preempted. ERAC has paid the full \$60,000 which is the aggregate limit required by Minnesota law for the privilege of registering or operating a motor vehicle, of course.

Appellant does not and cannot argue legitimately that ERAC has failed to comply with those laws. ERAC undisputedly has complied with those laws by self-insuring for the first \$2 million in accordance with North Dakota self-insurance law and by

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<sup>9</sup> North Dakota also has laws imposing financial responsibility or insurance standards on motor vehicle owners for the privilege of registering and operating a motor vehicle. For example, the North Dakota Century Code, requires owners to insure or self-insure so as to provide \$25,000 per person and \$50,000 per accident. See N.D. Cent. Code § 39-16.1-1 (2009). ERAC also satisfied that requirement.

committing a portion of its self-insurance obligation contractually for the protection of an operator of a rented motor vehicle to the full extent of the requisite minimum residual liability insurance/self-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. Therefore, ERAC has complied with the only Minnesota law imposing financial responsibility or insurance standards on motor vehicle owners for the privilege of registering and operating a motor vehicle.

Minnesota still has laws penalizing an owner who fails to meet a state's financial responsibility or liability insurance requirements.<sup>10</sup> For example, motor vehicle owners who fail produce proof of insurance within ten days of an officer's request are guilty of a misdemeanor. See Minn. Stat. § 169.791, subd. 4. A motor vehicle owner who fails to furnish proof of insurance may also find his driver's license and motor vehicle registration revoked. See Minn. Stat. §§ 169.791, subd. 6; 169.792, subd. 7, 169.792, subd. 12. Such laws presumably would escape preemption under 49 U.S.C. § 30106(b)(2). This appeal, however, implicates none of those laws.

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<sup>10</sup> Some of them have been repealed. For example, Minnesota's Safety (Financial) Responsibility Act of 1945 required a owner of, or driver involved in, a motor vehicle accident causing personal injury, death, or property damage in excess of \$50 to furnish security in an amount sufficient to satisfy any judgment resulting from the accident. See 1945 Minn. Laws ch. 285, § 5. Failure to do so, or the commission of offenses resulting in driver's license revocation, meant the driver or owner had to provide proof of future financial responsibility. See id. at § 16. The Minnesota Legislature repealed much of the Safety Responsibility Act in 1974 when it passed the Minnesota No Fault Automobile Liability Insurance Act. See Widness, 635 N.W.2d at 521.

**E. Neither Minnesota's Safety (Financial) Responsibility Act Nor The Vicarious Liability Cap Available To Rental Vehicle Owners Escape Preemption, Because Those Statutes Fall Outside The Kinds Of Laws Saved From Preemption By The Graves Amendment's Savings Clause.**

Appellant argues that two Minnesota statutes, Minnesota's Safety (Financial) Responsibility Act, codified at Minn. Stat. §§ 169.09, subd. 5a, and the vicarious liability cap available to rental vehicle owners, codified at 65B.49, subd. 5a(i)(2) avoid preemption when read together and obligate ERAC to afford greater protection than the 30-60 limit required by Minn. Stat. § 65B.49, subd. 3. See Appellant's Brief at 10-19. Yet those statutes, whether read individually or together, fail to satisfy the conditions of the Graves Amendment's savings clause. Reading them in pari materia, as Appellant urges, only reinforces the conclusion that the Graves Amendment preempts both statutes in the case of rental vehicle owners such as ERAC. Therefore, those statutes cannot avoid preemption under the Graves Amendment, and Appellant's position on appeal is untenable and must fail.

- 1. The Minnesota Safety (Financial) Responsibility Act, Minn. Stat. § 169.09, subd. 5a, which only imposes vicarious liability on a motor vehicle owner as owner for accidents caused by a permissive user, does not survive preemption according to the plain language of the Graves Amendment's savings clause.**

As noted above, the Minnesota Safety (Financial) Responsibility Act does nothing but impose vicarious liability on a motor vehicle owner as owner for accidents caused by a permissive user by making the driver the owner's agent. See Minn. Stat. § 169.09, subd. 5a. To survive preemption under the Graves Amendment's savings clause, this statute would have to either: (1) impose financial responsibility and insurance standards

for the privilege of registering and operating a motor vehicle; or (2) penalize 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. Section 169.09, subd. 5a is, instead, the single, solitary statute which imposes vicarious liability upon the owner of a motor vehicle.

As such, Minn. Stat. § 169.09, subd. 5a fails to satisfy either of the conditions for avoiding preemption. It does not impose any “standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle.” 42 U.S.C. § 30106(b)(1). It also does not penalize 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 Minnesota law. Rather, Minn. Stat. § 169.09, subd. 5a, merely imposes vicarious liability on owners of motor vehicles for the tortious conduct of permissive users by providing that one who operates a motor vehicle in this State with the owner’s express or implied consent is deemed the owner’s agent. See Minn. Stat. § 169.09, subd. 5a. That statute is the very kind of state law the Graves Amendment preempts, because it makes a motor vehicle owner liable for the operator’s negligence by creating an agency relationship between the owner and operator. See Kangas v. Winqvist, 207 Minn. 315, 316-317, 291 N.W. 292, 293 (1940) (discussing the purpose behind 3 Mason Minn. St. 1938 Supp. § 2720-104, now codified as Minn. Stat. § 169.09, subd. 5a).

Any effort to exempt Minn. Stat. § 169.09, subd. 5a, from preemption by arguing that the statute constitutes a “financial responsibility” standard or requirement under the

Graves Amendment's savings clause must fail. Because the only function of Minn. Stat. § 169.09, subd. 5a, is to make a motor vehicle owner vicariously liable for the operator's tortious conduct, the Grave Amendment must preempt it. Any contrary argument renders the Graves Amendment's preemption clause meaningless and, as a matter of statutory interpretation, "runs afoul of the presumption against surplusage." Garcia, 540 F.3d at 1248. All Minn. Stat. § 169.09, subd. 5a does is impose vicarious liability on motor vehicle (including rental vehicle) owners as owners. Accordingly, the Graves Amendment necessarily must preempt it. Therefore, the notion that Minnesota's Safety (or Financial) Responsibility Act somehow escapes preemption and imposes a greater self-insurance obligation on ERAC is without merit.

**2. Minnesota's vicarious liability cap available to rental vehicle owners also does not survive preemption according to the plain language of the Graves Amendment's savings clause.**

Section 65B.49, subd. 5a(i)(2) provides certain inducements which allow a rental vehicle owner to cap its otherwise unlimited vicarious liability. It provides:

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).

Two things are noteworthy about this provision. First, 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). Second, it imposes no penalty on businesses engaged in the trade of renting or leasing motor vehicles for failing to comply with financial responsibility or insurance requirements.

The provision merely gives a rental vehicle owners an incentive for limiting its otherwise vicarious liability, “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.” Minn. Stat. § 65B.49, subd. 5a(i)(2).<sup>11</sup> Concerning Minn. Stat. § 65B.49, subd. 5a(i)(2), Justice G. Barry Anderson observed while sitting as Judge of the Minnesota Court of Appeals: “In short, in exchange for maintaining a certain level of

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<sup>11</sup> Section 65B.49, subd. 5a(i)(3) provides that those amounts be adjusted periodically for inflation. According to the adjustment applicable for the date of this accident, the limit for bodily injury to any one person in any one accident was \$115,000, the limit for bodily injury to two or more persons in any one accident was \$350,000, and the limit for damage to property of others in any one accident was \$55,000. The Commerce Commissioner has adjusted these limits twice since that time. See Minnesota Department of Commerce Memorandum, Addendum at 027. Given the fact that the Graves Amendment preempts Minn. Stat. § 65B.49, subd. 5a(i)(2) for the reasons discussed below, these adjustments are pointless.

liability coverage, vicarious liability of the rental car company, as owner of the vehicle, is capped.” Johnson v. Americar Rental Systems, 613 N.W.2d 773, 776 (Minn.App. 2000), review den’d. (Minn. Sept. 26, 2000). Justice Anderson’s understanding of the purpose behind Minn. Stat. § 65B.49, subd. 5a(i)(2) was shared by the Honorable Donald D. Alsop, who called that statute a “vicarious liability cap” and observed that this statutory provision allowed a rental vehicle owner to cap its vicarious liability if it purchased insurance, or was self-insured, at certain, specified amounts. See U-Haul Company of Texas v. Tony Sibet, No. CIV 98-1371 (D.Minn. July 2, 1999) (order granting summary judgment), Respondent’s Addendum at 021-022.<sup>12</sup>

Most importantly, the interpretation which Justice Anderson and Judge Alsop have given to Minn. Stat. § 65B.49, subd. 5a(i)(2) finds support in the express language of that statute. Its last sentence plainly states: “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). Because the Graves Amendment preempts the Minnesota Safety (Financial) Responsibility Act, it also must preempt the vicarious liability cap statute, which does nothing more than give rental vehicle owners incentives for limiting their otherwise unlimited vicarious liability. Preemption of Minn. Stat. § 169.09, subd.

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<sup>12</sup> U-Haul Company of Texas, although a federal district court decision, illustrates the multi-million dollar vicarious liability potential that existed before the Minnesota Legislature passed Minn. Stat. § 65B.49, subd. 5a(i), as well as the consequences of failing to accept that provisions incentives. See U-Haul Company of Texas, No. CIV 98-1371, at 7-9, Addendum at 024-026. In this action, there is no claim that ERAC failed to accept the incentives given in that provision. In any event, Minn. Stat. § 65B.49, subd. 5a(i)(2) applies only to the vicarious liability of rental vehicle owners as owners, and such vicarious liability does not and cannot survive the Graves Amendment’s preemption.

5a eviscerates Minn. Stat. § 65B.49, subd. 5a(i)(2) and (3) of their purpose. Therefore, the Minnesota Court of Appeals properly determined that the vicarious liability cap statute is without effect. Meyer, 759 N.W.2d at 432. Accordingly, Minn. Stat. § 65B.49, subd. 5a(i)(2) does not survive preemption.

**3. Construing the Minnesota Safety (Financial) Responsibility Act and the vicarious liability cap statute, in pari materia, as Appellant advocates, actually supports the conclusion that the Graves Amendment preempts those statutes, as both of them relate only to vicarious liability.**

Appellant contends that Minn. Stat. §§ 65B.49, subd. 5a(i)(2) and 169.09, subd. 5a, share a common statutory scheme and should be read together. See Appellant’s Brief at 10-19. Appellant’s position on appeal is untenable, particularly if the two statutes are in pari materia.<sup>13</sup> Section 169.09, subd. 5a, standing alone, imposes unlimited vicarious liability on rental vehicle owners. Being in pari materia with Minn. Stat. § 169.09, subd. 5a, Minn. Stat. § 65B.49, subd. 5a(i)(2), merely provides rental vehicle owners with an inducement for capping unlimited vicarious liability. Indeed, the plain language of Minn. Stat. § 65B.49, subd. 5a(i)(2), supports that conclusion: “*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). Section 65B.49, subd. 5a(i)(2) would serve no purpose whatsoever if Minn. Stat. § 169.09, subd. 5a, did not impose unlimited vicarious liability on rental vehicle owners. The Eleventh Circuit expressed

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<sup>13</sup> According to this canon of statutory construction, statutes relating to the same purpose or thing should be construed together. See Eischen v. Hildebrandt, 683 N.W.2d 813, 816 n.3 (2004) (citing Apple Valley Red-E-Mix, Inc. v. State by Dept. of Public Safety, 352 N.W.2d 402, 404 (Minn. 1984)).

this thought best in connection with Florida’s statutory scheme: “[F]inancial responsibility laws are legal requirements, not mere financial inducements imposed by law. Moreover, the inducement appellants rely upon is again premised on the very vicarious liability the Graves Amendment seeks to eliminate.” Garcia, 540 F.3d at 1248. Therefore, the argument that Minn. Stat. § 65B.49, subd. 5a(i)(2) stands in pari materia with Minn. Stat. § 169.09, subd. 5a, actually supports the argument that the Graves Amendment preempts both statutes together as well as alone.

### CONCLUSION

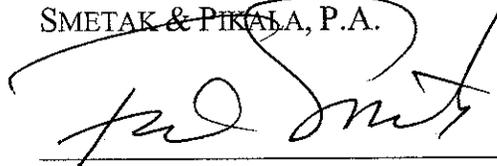
The rule of law that ERAC would have this court apply is that the Graves Amendment preempts both the Minnesota Safety (Financial) Responsibility Act, Minn. Stat. § 169.09, subd. 5a, and the vicarious liability cap statute applicable to rental vehicle owners, Minn. Stat. § 65B.49, subd. 5a(i)(2), meaning that ERAC has no further liability to Appellant for this accident. Section 169.09, subd. 5a, only imposes vicarious liability on motor vehicle owners as owners. The Graves Amendment clearly preempts that statute to the extent it imposes vicarious liability on rental vehicle owners as owners for accidents, like the subject accident, which occur during the rental period. Section 65B.49, subd. 5a(i)(2) imposes no financial responsibility standards or requirements on rental vehicle owners for the privilege of operating or registering a motor vehicle, nor does it penalize rental vehicle owners for failing to comply with financial responsibility standards or requirements. Section 65B.49, subd. 5a(i)(2) merely provides rental vehicle owners with incentives for limiting or capping their otherwise unlimited vicarious liability. Accordingly, the Graves Amendment also preempts that statute. Therefore, the

decisions of both the Minnesota Court of Appeals and the Otter Tail County District Court must be affirmed in all respects.

Respectfully submitted,

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Dated: 5/28/09



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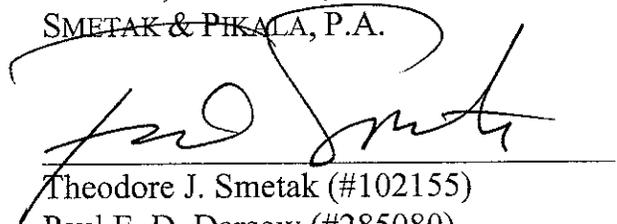
**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Brief of Enterprise Rent-A-Car Company of Montana/Wyoming d/b/a Enterprise Rent-A-Car of Dakotas/Nebraska conforms to Minn.R.Civ.App.P. 132.01, subd. 3(c)(1), for a brief produced with proportionally spaced font.

There are 7,770 words in this Brief, not including the Table of Contents and the Table of Authorities. The word processing software used to prepare this Brief was Microsoft® Office Word 2003.

Dated: 5/28/09

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