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NO. A08-250

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State of Minnesota  
 In Supreme Court

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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, Jehoshophat Mphosi, injured,  
*Appellant,*

and

Bunmi Obembe and Christopher Obembe,

*Intervenors,*

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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**BRIEF AND APPENDIX OF AMICUS CURIAE  
 MINNESOTA ASSOCIATION FOR JUSTICE**

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## INTRODUCTION

The Minnesota Association for Justice (MNAJ) is a non-profit Minnesota corporation whose members are trial lawyers in private practice.<sup>1</sup> These attorneys devote a substantial portion of their efforts to the representation of people who are injured in the State of Minnesota. The particular concern raised by the decision under review is the ability of the State of Minnesota to exercise its police powers to protect the victims of negligent drivers who would not be fully compensated for their injuries because of insufficient liability insurance coverage.

The position of MNAJ is simple and straightforward. Minnesota's statutory scheme mandating \$115,000 of liability coverage here for Respondent Enterprise Rent-A-Car reflects the Minnesota Legislature's determination in 1995 of the financial responsibility rental car companies must meet to operate in Minnesota, and thus fits squarely within the "Savings Clause" of the Graves Amendment. While Congress may have the ability to preempt a state's use of its police powers to protect its citizens (the "Graves Amendment" protecting the rental car industry being such an example), longstanding principles of presumption (strongly reaffirmed just months ago by the United States Supreme Court in *Wyeth v. Levine*)<sup>2</sup> require that the legislation be interpreted in a manner causing the least interference with these police

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<sup>1</sup> This brief was authored entirely by the undersigned, counsel for Amicus Minnesota Association for Justice, and no person or entity other MNAJ has made a monetary contribution to the preparation or submission of this brief.

<sup>2</sup> 129 S.Ct. 1187 (2009).

powers, and take into account the purpose of the legislation and the state's public policy being interfered with. The Graves Amendment was the product of an amendment on the floor of the House of Representatives, without the benefit of any hearings or input from the states (despite a plea from the states to be heard). Yet, even without the usual hearings, which ordinarily would provide a context and factual record underlying the legislation, the brief floor debate, contemporaneous documentation and the language of the Graves Amendment itself, all show the Congressional intent was two-fold. First, the legislation was intended to protect the rental car industry against the unlimited vicarious liability law applicable in a number of states (but not Minnesota) that was supposedly threatening their financial viability, and second, still permit the states to protect their citizens by mandating "insurance standards" the state deems necessary to ensure the "financial responsibility" of rental car companies. Minnesota has long evidenced a strong intent to use its police powers to protect innocent citizens injured in automobile accidents from the severe financial distress that often befalls them. Minnesota's enactment of a statutory scheme that mandates the specified sum for which rental car companies are responsible falls squarely within the "financial responsibility" and "insurance standards" language of the savings clause of the Graves Amendment and hence its application here is entirely consistent with the intent of Congress.

### ARGUMENT

At the outset, it is important to note Amicus MNAJ's focus in this brief. MNAJ does

not intend to address or comment on any of the facts in the underlying case. Additionally, because Amicus Curiae State of Minnesota has thoroughly addressed preemption principles in its brief, MNAJ will not repeat that discussion here.

Rather, it is MNAJ's intent to focus on a pure legal issue of wide application and critical importance to the citizens of Minnesota. In a wide variety of areas, Minnesota has long been nationally recognized as being in the forefront of protecting the health, welfare, and financial well being of its citizens. The financial protection of its citizens injured in automobile accidents falls squarely within that long and esteemed position. This protection has included such innovative steps as mandated no-fault insurance coverage, mandated underinsured coverage, confirmation of insurance coverage as a prerequisite to obtain license plates, and liability limits that have increased over time.

It is this precise exercise of a state's police powers for the welfare of its citizens that Congress meant to protect when it included a savings clause in the Graves Amendment. The mere fact that Minnesota's law, by its evolution, mandates specified insurance coverage for rental vehicles through the use of a number of statutes acting in concert, one of which is the Safety Responsibility Act, does not (as Respondent Enterprise argues, and the Court of Appeals concluded) prevent it from falling within the intended scope of the savings clause of the Graves Amendment.

#### **I. THE LEGISLATIVE HISTORY OF THE GRAVES AMENDMENT.**

The Graves Amendment, which was the end product of heavy lobbying by the rental

car industry, was incredibly never the subject of any congressional hearings or even congressional findings. Instead, it was solely the product of an amendment on the floor of the House of Representatives by Congressman Sam Graves. The brief floor debates on the two occasions the Graves Amendment was before the House (April 1, 2004, when it failed by a voice vote, and on March 9, 2005, when it narrowly passed a vote of 218 to 201),<sup>3</sup> fleshed out by contemporaneous publications by the rental car industry, show that the focus of the Graves amendment was unlimited vicarious liability. In an article published in the May/June, 2004 *Auto Rental News*,<sup>4</sup> the publishing arm of the American Car Rental Association (the trade group that includes virtually every car rental company in America), ACRA explained to its members why the amendment initially failed to pass in April, 2004, and the basis for their ongoing lobbying efforts to pass the Graves Amendment.

This ACRA article noted that lobbying for the Graves Amendment was being “spearheaded” by the “Vehicle Renting and Leasing Fairness Alliance” (VRLFA), a “coalition of car rental and leasing companies.” (App., 11). The article noted that the opponents of the Graves Amendment had raised “hot button” issues that will likely resurface, including state’s rights and the plight of accident victims’ burdened by medical costs,” but noted that the “VRLFA isn’t ready to surrender.” *Id.* This article noted the particular

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<sup>3</sup> The full congressional records of the House debates are found at App., 1-3 (April 1, 2004 debate) and App., 4-10 (March 9, 2005 debate).

<sup>4</sup> Cathy Stephen, *Federal Tort Reform Efforts Focus on Transportation Bill*, AUTO RENTAL NEWS (May/June 2004) (App., 11-13).

concern to the car rental industry, namely “how vicarious liability has caused fleet insurance rates to skyrocket, resulting in many small businesses closing, particularly in New York.” (App., 12). Further, the article points to the industry’s claimed need for this legislation because “in the past year, scores of independents and franchises have shut their businesses in New York because vicarious liability has made insurance rates unaffordable for them.” *Id.* It further pointed out how, in opposition to the initial attempt to pass the Graves Amendment, New York Congressman Jerome Nadler vigorously contested the need for the Graves Amendment, pointing out in a debate on the floor that despite having unlimited vicarious liability, New York was still “one of the most active rental car markets in the country.” *Id.*

It is not the intent of this brief to resolve this debate, but simply to point out the debate was never joined because the sponsors of the Graves Amendment, then in control of Congress, chose to use the power of the majority to pass the amendment without any record that would normally be supplied in hearings. Indeed, they failed to hold hearing despite pleading to do so from The National Conference of State Legislatures. In an April 1, 2004, letter from the Chair of the National Conference of State Legislatures Standing Committee on Law and Criminal Justice, Chair Denton Harrington expressed “strong bipartisan opposition” to the Graves Amendment on the basis that it was a “blatant attempt by the U. S. Congress to preempt existing state laws regarding vicarious liability for rental car owners.” (App., 2). Most particularly, it opposed the amendment because it has been introduced

“without the benefit of a hearing or debate on how this amendment would impact existing state laws.” *Id.* As Chair Denton Harrington further explained:

Tort reform and liability are areas of law that have traditionally regulated by the states. NCSL supports state efforts to reform or not to reform their own vicarious liability statutes. Perhaps even more egregious is the fact that this federal effort to preempt state laws has been orchestrated without the benefit of input from the states. At the very least, Congress should have held a hearing and discussion of this very important issue.

*Id.*

The reason for noting this opposition by the state legislatures is not to re-fight the merits of the Graves Amendment, for the opponents of it were in the minority at the time and lost. Moreover, the question of whether the Graves Amendment was in fact needed to protect the rental car industry from states that (unlike Minnesota) had unlimited vicarious liability is essentially academic to the issue before the Court.

However, what the historical discussion does bring to the resolution of the issue before the Court is a explanation and understanding of the language of the Graves Amendment, most importantly its savings clause. Automobile insurance issues had always fallen squarely within the traditional police powers of the states. States had long varied in their determinations of the amounts and means used to ensure the “financial responsibility” of motor vehicle owners and/or operators. States varied not only in the amounts and types of insurance coverages mandated, but also in the manner in which they applied these coverages, such as requirements of posting bonds by self-insureds, or the removal or

suspension of driving or business privileges when judgments are not paid.<sup>5</sup>

The simple and key point here, relative to these various methodologies, is the widely recognized fact that the states were employing many different means to their ends. Unfortunately, in the absence of any hearings, the states (including Minnesota) never had an opportunity to present Congress with the protections of their citizens they thought necessary with respect to rental cars, and their manner of doing so. Yet, at the same time, the proponents of the Graves Amendment vigorously argued they intended to preserve the rights of these states to mandate certain coverages. For example, Congressman Graves stated that the “amendment requires that vehicles be covered, still be covered by the State-established minimum insurance levels for vicarious liability.” (App., 2). To effectuate this promise, the savings clause necessarily used, in 49 U.S.C. §30106(b)(1), the broad and general language of “financial responsibility” and “insurance standards.” Neither term is, of course, a term of art with an absolute meaning. Instead, and with critical import here, the language reflects the general concepts by which a state ensures that sufficient liability insurance coverage exists on motor vehicles to protect its citizens. These standards are also, by necessity, connected to a state’s power of regulation through the language used in the savings clause, namely the states’ ability to impose standards “for the privilege of registering and operating a motor

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<sup>5</sup> An example of a compilation of the various ways states imposed financial responsibility is set forth in a November 2007 “Survey of State Motor Vehicle Financial Responsibility Statutes,” compiled by the Equipment Leasing and Finance Association (ELFA) (App., 14-31).

vehicle.”

With this legislative history in mind, the next step is to examine the nature of Minnesota’s law, including the statutory scheme by which it mandates “financial responsibility” and “insurance standards” for rental cars used in Minnesota, and also in light of the preemption analysis required of this issue. As the Supreme Court has recently again made clear (and as discussed in detail in the Amicus Brief of the State of Minnesota), a preemption analysis can never be made in a vacuum. An understanding of the intended scope of the congressional purposes is critical, as is the police powers of the states that are at issue. As the Supreme Court recently stated in *Wyeth v. Levine*, 129 S.Ct. 1187, 1194-95 (2009), where it addressed a drug company’s claim that Vermont’s tort law was preempted by federal statute:

Our answer to that question must be guided by two cornerstones of our pre-emption jurisprudence. First, “the purpose of Congress is the ultimate touchstone in every pre-emption case.” 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.’ ” (Emphasis added, citations omitted)

## II. MINNESOTA’S STATUTORY SCHEME.

As surely as night follows day, the invention of the motor vehicle was soon followed by motor vehicle accidents, with innocent victims burdened with medical bills and lost wages, along with a host of other economic and non-economic damages. In Minnesota, the

protection of these innocent victims by ensuring the financial responsibility of the negligent parties took a number of forms, most significantly mandating its Safety Responsibility Act and a liberal approach to interpreting omnibus insurance clauses. In a decision emphasizing its historical liberal construction of legislation, this Court first explained how Minnesota's public policy was effectuated by its approach:

The enactment of section 170.54 in 1945 [Safety Responsibility Act] reflects the public policy of this state that owners of motor vehicles shall be responsible for torts committed by permittees in the use thereof. The enactment of the statute changed the common law. This court has recognized that public policy dictates that the statute be accorded the construction that will achieve the purpose of giving to persons injured by the negligent operation of automobiles "an approximate certainty" of an effective recovery by making the owner who lent his vehicle to another responsible as well as the possible or probable irresponsible operator. *Hutchings v. Bourdages*, 291 Minn. 211, 189 N.W.2d 706 (1971). *See also* Restatement (Second) of Torts § 485, comment b (1966).

We have increasingly given the statute a liberal construction to effectuate that public policy. Thus, we held in *Lange v. Potter*, 270 Minn. 173, 132 N.W.2d 734 (1965), that the owner of a vehicle, who had permitted his child to drive it with the admonishment that she should permit no other person to drive, was liable for a negligent act committed by one to whom the child had given permission to operate the vehicle. We there noted "our reluctance to adopt a construction of the vicarious liability act which would unjustifiably narrow or partially defeat the objective of protecting the public." *Id.* at 178, 132 N.W.2d at 737. We likewise noted in *Granley v. Crandall*, 288 Minn. 310, 313, 180 N.W.2d 190, 192 (1970), that the public policy of the state as reflected in section 170.54 is better served by holding as a matter of law that a parent who permits a child to use a car is deemed to have given consent to the operation of the vehicle by a third person driving with the child's permission or consent. In *Anderson v. Hedges Motor Co.*, 282 Minn. 217, 218, 164 N.W.2d 364, 366 (1969), even though we applied the "minor deviation" rule, we recognized that public policy required that the statute be given a liberal interpretation so as to effect its purpose of protecting victims of automobile accidents caused by negligent operators. The policy of giving the

statute a liberal construction for the protection of the public was reaffirmed in *State Farm Mutual Automobile Insurance Co. v. Dellwo*, 300 Minn. 409, 412, 220 N.W.2d 367, 369-70 (1974), and *Shelby Mutual Insurance Co. v. Kleman*, 255 N.W.2d 231, 233 (Minn.1977). Finally, as indicated in *Jones v. Fleischhacker*, 325 N.W.2d 633, 637 (Minn.1982), we held that if initial permission was given to a minor, absent acts amounting to theft or conversion, the owner would be vicariously liable notwithstanding that the permittee at the time and place of the accident was operating the vehicle outside the scope of consent. Throughout this entire line of cases, we have consistently reiterated that public policy demands the statute be given a liberal interpretation to accomplish its purpose. In essence, our focus has been on the “victim” of automobile accidents rather than on the owner/driver. *Leppla v. American Family Insurance Group*, 306 Minn. 478, 238 N.W.2d 592 (1976).

*Milbank Mut. Ins. Co. v. U.S. Fidelity and Guar. Co.* 332 N.W.2d 160, 164-66 (Minn.1983)

(emphasis added)

This Court further noted that the Minnesota Legislature actions supported this liberal interpretation.

Not only has this court perceived that the public policy of this state favors a liberal interpretation of the statute and liability insurance policy omnibus clauses so as to afford compensation to victims of automobile accidents, but the legislature has likewise, by adoption of several acts, evidenced a similar public policy. In addition to section 170.54, it has enacted 1971 Minn.Laws ch. 813 (current version at Minn.Stat. § 65B.06 (1982)) to insure the procurement of automobile liability policies by persons unable to secure coverage through ordinary insurance markets. It enacted 1967 Minn.Laws ch. 395 (current version at Minn.Stat. § 65B.13 (1982)) prohibiting insurers from discriminating against operators of automobiles because of race or physical handicap. It has placed limitations on an insurer for cancelling or reducing limits during the policy period. 1976 Minn.Laws ch. 463 (current version at Minn.Stat. § 65B.15 (1982)). In 1974 the legislature enacted the Minnesota No-Fault Automobile Insurance Act, Minn.Stat. ch. 65B (1982), in which it clearly indicated that the public policy of this state was to relieve severe economic stress of uncompensated persons injured in automobile accidents. That same act mandates that all owners of automobiles have liability insurance which provides, in addition to so-called benefits, (1) liability insurance in stated amounts, Minn.Stat. § 65B.49, subd.

3 (1982); (2) uninsured motor vehicle coverage, Minn.Stat. § 65B.49, subd. 4 (1982); and (3) makes it a misdemeanor for any owner of an automobile to operate or permit another to operate on the streets and highways a vehicle upon which the mandated coverage is absent. Minn.Stat. § 65B.67, subd. 2 (1982). This legislative history clearly indicates that the public policy of this state favors protection of the uncompensated victims of automobile accidents over any interest of an owner-insured or his insurer that he be not subject to liability when his permittee exceeds the scope of the initial permission. In our view, by extending initial permission to a vehicle operated, under section 170.54 the owner assumes the risk of liability attaching should the permittee not follow his use limitations; and the owner's insurer, under the omnibus clause in the automobile liability insurance policy, must afford liability coverage to the owner in the absence of facts indicating theft or conversion by the permittee.

*Id.* at 166-67.

Minnesota's Safety Responsibility Act has, from its inception, had the purpose of ensuring financial responsibility to protect the public. *Christensen v. Hennepin Trans. Co.*, 215 Minn. 394, 10 N.W.2d 406, 414 (1943) (expressly noting the purpose of the Legislature's adoption of its first owners responsibility act, 1933 Minn. Laws, Ch. 357, was to provide for the "financial responsibility" to pay damages in accidents). The premise that the owner's responsibility statute is a financial responsibility law was repeated by this Court in *Hutchings v. Bourdages*, 291 Minn. 211, 214, 189 N.W.2d 706, 709 (1971):

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

*See also, Lundberg v. Bierman*, 241 Minn. 349, 63 N.W.2d 355, 360 (1954) (liability for fault of permissive user "imposed...by our Financial Responsibility Act"); *Shuck v. Means*, 302

Minn. 93, 96, 226 N.W.2d 285, 287 (Minn. 1974)(provision intended to encourage vehicle owners, including rental car companies, to obtain appropriate liability insurance to cover even subpermittees).

As another aspect of Minnesota's statutory scheme to protect the public from harm caused in motor vehicle accidents, the legislature also ultimately added specific mandatory limits of liability insurance. As enacted in 1974, Minnesota's No-Fault Act originally mandated limits of \$25,000 "because of bodily injury to one person in any one accident" and "not less than \$50,000 because of injury to two or more persons in any one accident." Minn.Stat. § 65B.49, subd. 3. In 1985, these limits were raised to 30,000/60,000. Laws 1985, c. 168, §§ 10 to 12.

In 1995, Minnesota again raised the mandated amount of liability coverage, this time solely with respect to rental cars, and as part of legislation that permitted rental car companies to limit their vicarious liability in return for these higher limits of 100,000/300,000 (with an escalator clause built in). What particularly stand out from the 1995 legislation that lies at the heart of this appeal are two fundamental points: First, nine years before Congressman Graves first introduced his amendment to protect the rental car industry from unlimited vicarious liability, Minnesota was already addressing this concern; and second, while Minnesota was willing to limit its protection of the public to these specific limits, these new limits were made mandatory for rental car companies that wanted this limitation on their vicarious liability.

Two competing versions of legislation protecting the rental car industry were introduced in 1995, a House bill that completely exempted car rental companies from the Safety Responsibility Act, H.F. 1178 (App., 32-34), and the Senate bill, S.F. 1204 (App., 35-37), which ultimately prevailed and included the language in Minn.Stat. § 65B.49, subd. 5a(i)(2).<sup>6</sup> Of critical import here, the Legislature did not adopt the approach of H.F. 1178, which was to eliminate the financial responsibility requirement imposed by the owner's responsibility law on motor vehicle rental companies. Rather, it adopted the Senate approach mandating specific limits on rental car companies. In exchange for compliance with these new limits, rental car companies would no longer face unlimited vicarious liability.

The chief author of the Senate bill was Senator Betzold. In presenting the bill to the Senate Judiciary Committee at a hearing on April 6, 1995, he described it as a bill setting "greater limits" on a car rental company so that the law would provide "greater protection." Senate Judiciary Committee hearing tape #393, side B of Tape 2, 4-6-1995.

Hence, the means used by the Legislature to arrive at higher liability insurance limits for rental car companies was quite simple and reasonable. In exchange for their compliance with new specified limits of \$100,000/\$300,000 (with a small escalator clause), they would

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<sup>6</sup> The House, on the floor on April 26, 1995, referred S.F. 1204 for comparison with H.F. 1178, and the next day (4-27-1995) substituted S.F. 1204 for H.F. 1178. The language which eventually became Minn.Stat. § 65B.49, subd. 5a(i)(2), was then added to S.F. 1204 on the House floor by amendment on May 12, 1995 (House Journal, pp. 4294-4295). That identical language made into the Conference Committee Report on S.F. No. 1204, which was adopted by the House on May 19, 1995 (House Journal, p. 5077) and the Senate.

no longer face unlimited vicariously liability. The key aspect of this legislation with respect to the savings clause of the Graves Amendment is that vicarious liability is not the basis of these new limits. Rather, the limits are now as stated in Minn.Stat. § 65B.49, subd. 5a(i)(2), and are Minnesota’s determination of the financial responsibility rental car companies must meet to do business in Minnesota.). This statute 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; 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. (Emphasis added).

In light of the saving clause in the Graves Amendment mandating deference to states which require specific amounts of liability coverage to ensure the “financial responsibility” of rental car companies, Minnesota’s statutory scheme fits precisely within this clear Congressional intent.

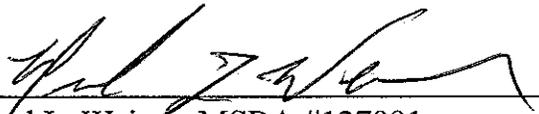
### CONCLUSION

Amicus MNAJ therefore respectfully urges this Court to reverse the Court of Appeals

and rule that Graves Amendment does not preempt the application of Minn. Stat. §65B.49, subd. 5a(i)(2).

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Dated: May 11, 2009



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