Supreme Court of Florida

CASE NO. SC08-2269

RAFAEL VARGAS,

Petitioner,

v.

ENTERPRISE LEASING CO.,
ELIZABETH PRICE, and
JIMMY MIDDLETON,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW FROM
QUESTION OF GREAT PUBLIC IMPORTANCE CERTIFIED
BY FLORIDA FOURTH DISTRICT COURT OF APPEAL

FLORIDA JUSTICE ASSOCIATION'S CORRECTED AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

The Amicus Curiae, Florida Justice Association ("FJA"), formerly known as the Academy of Florida Trial Lawyers, is a statewide not-for-profit organization of thousands of trial and appellate lawyers. The FJA frequently appears in cases involving issues important to the rights of individuals and to the administration of justice. The Objectives and Goals set forth in the Charter of the FJA are as follows:

> Section I. The objectives of this corporation are to: (a) Uphold and defend the principles of the Constitutions of the United States and the State of Florida. (b) Advance the science of jurisprudence. (c) Train in all fields and phases of advocacy. (d) Promote the administration of justice for the public good. (e) Uphold the honor and dignity of the profession of law. (f) Encourage mutual support and cooperation among members of the Bar. (g) Diligently work to promote public safety and welfare while protecting individual liberties. (h) Encourage the public awareness and understanding of the adversary system and to uphold and improve the adversary system, assuring that the courts shall be kept open and accessible to every person for redress of any injury and that the right to trial by jury shall be secure to all and remain inviolate.

Article II, FJA Charter, approved October 26, 1973.

Consistent with the foregoing, the FJA has one of the State's most active Amicus Curiae committees, whose members work on a pro bono basis to address important issues of substantive and procedural law of widespread importance to the

FJA's members and our clients, as well as to all of the citizens of the State[1].

The FJA's interest in this case is that its members frequently represent those injured by the negligence of drivers of rental vehicles, and the survivors of Florida citizens killed by such negligence. Those at-fault renters often are uninsured, and usually are at least underinsured (and individually judgment-proof), leaving those harmed by their negligence to seek medical treatment at public hospitals and recovery of other governmental assistance, at the expense of the taxpayers. The FJA in this brief intends to demonstrate that the intent of Congress in enacting the Graves Amendment was not to completely immunize for-profit car rental companies from liability for the reasonable financial-responsibility limits and insurance requirements imposed by the Florida Legislature.

SUMMARY OF THE ARGUMENT

Enterprise's motion for summary judgment should have been denied because the claims made against it by Mr. Vargas were outside the immunity provision afforded under the Graves Amendment, 49 U.S.C. § 30106. The immunity provision provides that the statute does not supercede the law of a state or a political subdivision imposing liability upon car rental companies for failing to meet financial responsibility or insurance requirements. Congress intended the

[1] A LEXIS search reflects 430 opinions in cases in which the FJA/Academy

immunity provision to preempt only those state laws imposing unlimited vicarious liability upon car rental companies.

Section 324.021(9)(b)2, Fla. Stat. imposes both financial responsibility and insurance requirements upon car rental companies, and Chapter 324 of Florida Statutes contains other "financial responsibility" laws within the meaning of the exceptions to preemption under 49 U.S.C. §30106. Therefore, the certified question should be answered in the negative.

ARGUMENT

THE PLAINTIFF'S CLAIMS WERE NOT PREEMPTED BECAUSE FLORIDA LAW IS WITHIN THE "INSURANCE REQUIREMENTS" AND "FINANCIAL RESPONSIBILITY" EXCEPTIONS UNDER THE GRAVES AMENDMENT

A. Introduction:

Enterprise's motion for summary judgment should have been denied because, as a matter of law, the claims made against it by Mr. Vargas were outside the immunity provision afforded under 49 U.S.C. §30106. That federal immunity statute has express exceptions for claims brought against car rental companies based upon state insurance and financial responsibility laws. Those exceptions are stated as follows:

> (b) Financial Responsibility Laws. Nothing in this section

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participated as an amicus curiae, dating back almost forty years.

supercedes the law of any State or political subdivision—

> (1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle;
>
> (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under state law.

49 U.S.C. § 30106(b).

Mr. Vargas' claims against Enterprise are within both the "financial responsibility" and "liability insurance requirements" exceptions to the immunity statute. Chapter 324 of Florida Statutes imposes detailed financial responsibility standards on owners of motor vehicles as conditions upon the privilege of registering and operating vehicles in this state. That chapter also imposes liability upon vehicle owners of vehicles that fail to meet insurance requirements established therein.

Chapter 324, is entitled "Financial Responsibility." Section 324.251 makes clear the purpose of each and every section of statutes within chapter 324 where it states: "This chapter may be cited as the 'Financial Responsibility Law of 1955' and shall become effective at 12:01 a.m., October 1, 1955." Subsection (7) of section 324.021 is entitled "Proof of Financial Responsibility." There are several other interrelated statutes within Chapter 324 establishing that the limited liability

of a rental car company under Florida law is the product of a statutory "financial responsibility" and "insurance requirements" scheme such as that contemplated by Congress in enacting the Graves Amendment.

B. Congress Intended to Preempt Only Laws Imposing Unlimited Vicarious Liability on Car Rental Companies:

The legislative history demonstrates the intent of Congress that the Graves Amendment should be effective only to preempt the laws of those states that impose ***unlimited*** vicarious liability upon car rental companies. In states like Florida, in which car rental companies' vicarious liability is limited by statute, the Graves Amendment was not intended to totally immunize car renters from all liability. In other words, the Congress viewed state statutory caps on car rental companies' liability as "financial responsibility" laws within the exception to the immunity statute.

The intent of Congress to make Graves Amendment preemption effective only in those states where vicarious liability was unlimited can be gleaned from the pronouncements[2] about the amendment in the Congressional Record. In offering his amendment to the SAFETEA[3] bill, Representative Graves defined the scope of

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[2]The Congressional Record reflects that there was no real "debate" on the matter.

[3] The law that was amended by the Graves Amendment was the "Safe,

the state laws intended to be preempted by his amendment as follows:

> Mr. Chairman, I am here today to correct an inequity in the car and truck renting and leasing industry. By reforming vicarious liability to establish a national standard that all but a small handful of states already follow, we will restore fair competition to the car and truck renting and leasing industry and lower cost and increase choices for all consumers.
>
> ***Currently, a small number of States impose*** vicarious liability or ***limitless liability*** without fault, on companies and their affiliates simply because they own a vehicle involved in an accident. Whether or not the vehicle [sic] was at fault is completely irrelevant in these situations. These vicarious liability lawsuits cost consumers nationwide over $100 million annually.

151 Congressional Record No.27 (Mar. 9, 2005)(App. A)(emphasis added).

The proponent of the amendment directed it only to those handful of states imposing "limitless liability without fault." Therefore, states like Florida with statutes capping the liability of car rental companies must be within the "financial responsibility" exception to the Graves Amendment.

On the Senate side of Congress, the record also make it clear that the Graves Amendment was intended only to affect states without caps on car rental companies' liability. Senator Santorum spoke in favor of the Graves Amendment and described its intended scope as follows:

> Though only a few States enforce laws that threaten non-

Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users," Pub. L. No.109-59 119 Stat. 1144 (2005).

> negligent companies with ***unlimited vicarious liability*** they affect consumers and businesses from all 50 States. Vicarious liability means higher consumer costs in acquiring vehicles and buying insurance and means higher commercial costs for the transportation of goods. Left unreformed, ***these laws*** could have a devastating effect on an increasing number of businesses that have done nothing wrong.

151 Congressional Record No. 66 (May 18, 2005)(App. B) (emphasis added).

The laws that Congress intended to preempt in enacting the Graves Amendment were "these laws" referred to by Senator Santorum in which states imposed "unlimited vicarious liability." There is nothing in the legislative history to indicate that Congress intended to preempt state law in states where the liability of car rental companies—their financial responsibility—is limited to reasonable sums.

The United States Supreme Court approves the use of legislative history to glean the intent of Congress in ascertaining the scope of federal preemption of state laws. In *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991), the Supreme Court reversed a state court decision holding that a federal statute preempted state law pertaining to spraying of insecticides. The Court first addressed the importance of ascertaining congressional intent to preempt state law: "When considering pre-emption, 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.'" *Id.* at 605 (emphasis

added).

The Court then addressed the use of congressional committee reports as evidence of Congress' intent to preempt state law:

> As for the propriety of using legislative history at all, common sense suggests that inquiry benefits from reviewing additional information rather than ignoring it. As Chief Justice Marshall put it, "where the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived." *United States* v. *Fisher*, 6 U.S. 358, 2 Cranch 358, 386, 2 L. Ed. 304 (1805). Legislative history materials are not generally so misleading that jurists should never employ them in a good-faith effort to discern legislative intent. ***Our precedents demonstrate that the Court's practice of utilizing legislative history reaches well into its past.*** See, *e. g., Wallace* v. *Parker*, 6 Pet. 680, 687-690 (1832). We suspect that the practice will likewise reach well into the future.

Id. at 611, n. 4 (emphasis added).

Floor speeches by the proponent of amendments have been cited by the Supreme Court as evidence of congressional intent. In *Regents of the University of California v. Public Employment Relations Board*, 485 U.S. 589 (1988), the Court cited floor debate published in the Congressional Record, wherein "Senator Sutherland, the sponsor of the specific amendment, explained its intent." *Id.* at 596. "The House Report reflected a similar intent that the amendment put the statute 'in exact conformity with the construction placed upon existing law.'" *Id.* Although "[t]he contemporaneous remarks of a sponsor of legislation are certainly

not controlling in analyzing legislative history,"[4] those remarks concerning the intended scope of federal preemption should be carefully considered, in light of the need to find that preemption of a given state law was the "clear and manifest purpose" of Congress.

C. Section 324.021 Imposes Liability For Failing to Meet $100,000/ $300,000/$50,000 Financial Responsibility and Insurance Requirements:

Florida law does not impose limitless liability on short-term renters of automobiles. Therefore, it is within the financial responsibility and insurance requirements exception to preemption under the Graves Amendment.

Section 324.021(9)(b)2, Fla. Stat. provides as follows:

> The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up the $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle.

The limited liability amounts of $100,000/$300,000/$50,000 found in section 324.021(9)(b)2 are outside the scope of the intended reach of the Graves Amendment, because the intent of Congress in enacting the Graves Amendment

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[4] *Weinberger v. Rossi*, 456 U.S. 25, 35, n.15 (1982).

was only to preempt state laws imposing unlimited vicarious liability, not laws like Florida's that set reasonable sums as the extent[5] of a rental car company's financial responsibility to the motoring public.

The position taken by Enterprise below (and of the entire rental car industry) in this and other cases—that the $100,000/$300,000/$50,000 limits are not within the "financial responsibility" exception to federal preemption because they are "***caps***" on liability already imposed (by the dangerous instrumentality doctrine) rather than part of a state law "***imposing*** financial responsibility" not otherwise present—should be rejected because that position would require the Court to accept an overly-rigid reading of the statutory exception. That is not in keeping with the applicable standard of review because, "when the text of a pre-emption clause is susceptible to more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" *Altria Group, Inc. v. Good*, 129 S. Ct. 538, 543 (2008).

Here is why Enterprise's proposed reading of the "financial responsibility" exception is too strained to be accepted. Enterprise cannot contend that the following scenario of statutory enactments would be outside the exception to

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[5]As discussed in the next section of this brief, the extent of a rental company's financial responsibility depends on its compliance with the requirement that it ensure that its renter has additional insurance. If the rental company fails

preemption:

1.) In statute no. 1, the Florida Legislature abolishes the Dangerous Instrumentality Doctrine insofar as it applies to car rental companies.

2.) In statute no. 2, the Florida Legislature decrees that "Rental car companies are henceforth required to post bonds or obtain insurance to ensure financial responsibility to those injured by the negligence of their lessees; such bonds or insurance to be in the minimum amount of $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage."

3.) In statute no. 3, the Florida Legislature pronounces that "liability is hereby imposed upon 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 Statute No. 2, up to the amount of those requirements."

The foregoing statutory scheme would obviously be permissible under the Graves Amendment, and car rental companies like Enterprise would be liable for up to the limits in question because the statutes would fall within the "financial responsibility" and "liability insurance requirements under State law," within the meaning of 49 U.S.C. § 30106(b)(2).

It makes no sense for Enterprise to argue that the preemption issue should be decided any differently because § 324.021(9)(b)2 was enacted as a "cap" on

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that responsibility, the extent of its financial responsibility is higher.

vicarious liability, instead of being adopted in accordance with the above example of repealing the Dangerous Instrumentality Doctrine and then separately adopting financial responsibility and insurance requirements. Enterprise's position makes even less sense in light of the legislative history revealing that the Graves Amendment was directed to those state laws that imposed unlimited vicarious liability.

D. Section 324.021 Imposes Additional Liability For Failing to Meet Financial Responsibility and Insurance Requirements:

As seen, under § 324.021(9)(b)2, if a rental car leased on a short-term basis is covered by adequate liability insurance, the liability of the lessor is limited to $100,000 per person. To enjoy such limited liability, however, the lessor must make sure that there is at least $500,000 in liability insurance covering the lessee. Thus, the requirement that there be at least $500,000 in combined property damage and bodily injury liability coverage is a "liability insurance requirement[] under state law," within the meaning of the Graves Amendment.

If the lessee has less than the required insurance covering the rental vehicle in question, the lessor will be liable for economic damages up to that $500,000 amount. Thus, section 324.021(9)(b)2. is a state law "imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet financial responsibility or liability insurance

requirements under state law," within the meaning of the Graves Amendment.

E. Chapter 324 Contains Other "Financial Responsibility Laws" Within the Exception to Preemption of the Graves Amendment:

In addition to 324.021(9)(b) imposing insurance and financial responsibility requirements, other Florida statutes within Chapter 324 establish that owners of rental vehicles bear financial responsibility and must meet financial responsibility requirements as conditions of registering and operating their vehicles on Florida's highways. Section 324.011 (2003), entitled "Purpose of Chapter," states as follows:

> It is the intent of this chapter to recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used with due consideration for others and their property, and to promote safety and ***provide financial security requirements for such owners or operators whose responsibility it is to recompense others for injury*** to a person or property caused by the operation of a motor vehicle. Therefore, it is required herein that the operator of a motor vehicle involved in a crash or convicted of certain traffic offenses meeting the operative provisions of s. 324.051(2) ***shall respond for such damages and show proof of financial ability to respond*** for damages in future accidents as a requisite to his or her future exercise of such privileges.

(emphasis added).

Section 324.021(7) defines "proof of financial responsibility" as "[t]hat proof of ability to respond in damages for liability on account of crashes arising out of the use of a motor vehicle . . . [i]n the amount of $10,000 because of bodily

injury to, or death of, one person in any one crash . . . ." This Court has recognized that the various provisions within Chapter 324 requiring demonstration of a vehicle owner's net worth, purchasing an insurance policy, obtaining a certificate of insurance, and other provisions are "financial responsibility" provisions. *See Susco Car Rental System v. Leonard*, 112 So. 2d 832, 837 & n.17 (Fla. 1959), in which the court referred to the "numerous provisions to assure financial responsibility of owners," and cited "Chapter 324, Florida Statutes, F.S.A."

As required by Sections 324.011 and 324.051, Fla. Stat. (2003), all operators of motor vehicles involved in crashes are required to "show proof of financial ability to respond for damages in future accidents." "[P]roof of compliance with financial responsibility requirements [must be made] at the time of registration of any such motor vehicle . . . [or t]he issuing agent shall refuse to register a motor vehicle if such proof of purchase is not provided or if one of the other methods of proving financial responsibility as set forth in S. 324.031 is not met." Section 320.02(5)(b), Fla. Stat. (2003).

These requirements of compliance with Florida's financial responsibility laws as a condition of licensing or registering a motor vehicle brings Florida law within the exception to federal preemption applicable to "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 purpose of registering and operating a motor vehicle." *See* 49 U.S.C. §30106(b) (2005).

In addition to those financial responsibility statutes, the law has another provision which the FJA submits applies to a rental company such as Enterprise. Section 324.031, Fla. Stat. (2003) applies to "[t]he owner or operator of a taxi cab, limousine, jitney, or ***any other for-hire passenger transportation vehicle***." *Id*. (emphasis added). The term "for hire passenger transportation vehicle" is not defined in Florida statutes.[6] However, the plain meaning of those words would apply to a short-term rental of a passenger motor vehicle such as the one involved in this case. The rental car is "for hire" in the sense that the renter must pay the lessor a fee to use the vehicle. A rental car constitutes a vehicle used for "passenger transportation," as opposed to hauling cargo, so § 324.031 applies to rented vehicles.

Under § 324.031, the amount of financial responsibility a vehicle owner must demonstrate depends on the manner in which the owner satisfies the financial responsibility requirement. Under subsection (1) of that statute, the owner may

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[6] Appellant notes that there is a definition of the similar term "for-hire vehicle" within § 320.01(15)(a), Fla. Stat. (2003). That definition would appear to apply to rented vehicles. It "means any motor vehicle, when used for transporting persons or goods for compensation; ***let or rented to another for consideration***." (Emphasis added).

satisfy its financial responsibility obligation by "holding a motor vehicle liability policy as defined in the §§ 324.021(8) and 324.151." However, financial responsibility may be demonstrated by posting a bond or a cash deposit. *See* §§ 324.031(2) & (3). If those forms of financial responsibility compliance are exercised, the bond amount must be "equal to the number of vehicles owned times $30,000, to a maximum of $120,000; in addition, any such person other than a natural person, shall maintain insurance providing coverage in excess of limits of $10,000/$20,000/$10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of $125,000/$250,000/$50,000 or $300,000 combined single limits." *Id*. at (4).

Thus, even apart from the question whether Section 324.021(9)(b)2 establishes financial responsibility and insurance requirements within the exception to preemption of the Graves Amendment, other provisions under Chapter 324 do fall within the "financial responsibility" exception to federal preemption.

CONCLUSION

WHEREFORE, the Congress having only intended to preempt state laws imposing unlimited vicarious liability upon car rental companies, and Florida law having both financial responsibility and insurance requirements within the

exceptions to preemption under the Graves Amendment, the certified question should be answered in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were served by U.S. Mail upon Mariano Garcia, Gonzalez Porcher Albear & Garcia, Counsel for Petitioner, 2328 10th Avenue North, Suite 600, Lake Worth, Florida 33461; David C. Borucke, Holland & Knight, Counsel for Respondent, P.O. Box 1288, Tampa, Florida 33601; David V. King, Cooke & King, Counsel for Respondent, 444 West Railroad Avenue, Suite 400, West Palm Beach, Florida 33401, Jimmy Middleton (Pro Se Respondent) and Elizabeth Price (Pro Se Respondent), 14541 SE 91st Terrace, Summerfield, Florida 34491; Marjorie

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By: _____
ROY D. WASSON
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is prepared using 14 point Times New Roman.

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