IN THE SUPREME COURT OF FLORIDA

Case No. SC09-390

ALEJANDRO ROSADO,

Petitioner,

v.

DAIMLERCHRYSLER FINANCIAL SERVICES TRUST, ETC. ET AL.,

Respondents.

On Certified Question from the Second District Court of Appeal

ANSWER BRIEF OF THE RESPONDENT ON THE MERITS

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STATEMENT OF THE FACTS AND THE CASE

This lawsuit centers around an automobile accident that occurred on June 29, 2003 in Polk County, Florida. (R1:65) Respondent, DCFS Trust, is the long-term lessor of the leased vehicle alleged to have caused the accident. (R1:67) The lessee of the vehicle is a Virginia law firm. (R1:67) The vehicle was leased in Virginia from a Virginia car dealership, and then traveled from Virginia to Florida, where the accident occurred. (R1:65-68)

Petitioner, Alejandro Rosado ("Rosado"), seeks to hold DCFS Trust vicariously liable as the "owner" of the leased vehicle under Florida's dangerous instrumentality doctrine based the lessee's failure to maintain certain insurance limits pursuant to section 324.021(9)(b)(1), Florida Statutes. (R1:67-68) Rosado's single-count vicarious liability claim against DCFS Trust was filed by way of amendment on November 15, 2005. (R1:139)

On July 18, 2007, Circuit Judge Roger Alcott granted final summary judgment in favor of DCFS Trust, concluding that Rosado's vicarious liability claim against DCFS Trust was preempted by the so-called Graves Amendment, a federal law eliminating vicarious liability of lessors for damage caused by drivers of the leased vehicles. (R14:2254-55) At no time in the proceedings below did Rosado argue that the Graves Amendment did not apply because the accident happened before its effective date. (R15:1-126)

Rosado then appealed Judge Alcott's decision to the Second District Court of Appeal. (R1:2256-2257) After review, the majority held that the Graves Amendment preempted vicarious liability against DCFS Trust as the lessor. *See Rosado v. DaimlerChrysler Financial Services Trust*, 1 So.3d 1200, 1205-06 (Fla. 2d DCA 2009). Specifically, the Second District found the following:

> Subsection (b)(1) is similar in that it provides that the lease car company is not deemed the owner for financial responsibility or for vicarious liability so long as either the lessee has the designated policy of liability insurance in place or the lessor has a $1,000,000 blanket policy. Like subsection (b)(2), this subsection does not "impos[e] financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle" and does not "impose 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." It merely gives the leasing company *the option* to have insurance in place to avoid liability in Florida under the dangerous instrumentality doctrine. Because the statute *does not compel* a lease car company to have certain "insurance standards," this statute does not impose liability for a "failure" to meet insurance standards that are only *optional*.

Id. at 1205 (emphasis added). The majority also noted that while the dissent may have "accurately explain[ed] the purpose and function of section 324.021(9)(b)(1)," they concluded that the statute's plain language requires the ruling that" was reached. *Id.* at 1206.

The majority certified the following question to this Court as one of great importance:

> DOES THE GRAVES AMENDMENT, 49 U.S.C. §30106, PREEMPT SECTION 324.021(9)(B)(1) FLORIDA STATUTES (2002)?

Id. This Court accepted jurisdiction on November 9, 2011.

SUMMARY OF THE ARGUMENT

The certified question should be answered in the affirmative. The Graves Amendment precludes any state from making a law holding vehicle lessors liable for the negligence of drivers based solely on ownership of the vehicle, unless the lessor itself was negligent or committed some criminal wrongdoing. It is undisputed in this case that Rosado seeks to hold DCFS Trust vicariously liable based solely on DCFS Trust's status as the "owner" of the vehicle pursuant to Florida substantive law. It is also undisputed that DCFS Trust was not negligent and did not commit any criminal wrongdoing – such was not even pleaded. Thus, the Graves Amendment facially applies to preclude Rosado's vicarious liability claim against DCFS Trust.

The only remaining issues for consideration are: (1) whether the Graves Amendment itself is constitutional; and, (2) whether this case falls within the exception to the Graves Amendment, *i.e.*, whether section 324.021(9)(b)(1), Florida Statutes, constitutes a "financial responsibility law" preempted by federal law.As to the first issue, this Court has already held that the Graves Amendment was a proper exercise of Congress' Commerce Clause power. *See Vargas v. Enterprise Leasing Co.*, 60 So.3d 1037, 1043 (Fla. 2011). With regard to the second issue, Rosado simply cannot overcome the ruling by district court below, being that section 324.021(9)(b)(1) is not a "financial responsibility law" because

the statute did not "compel" the long term lessor to maintain "certain insurance standards" but, instead, "merely gives the leasing company the option to have insurance in place to avoid liability in Florida under the dangerous instrumentality doctrine." *Rosado*, 1 So.3d at 1205-06.

Based on the foregoing, this Court must affirm the decision below by holding that the Graves Amendment is constitutional and preempts Rosado's claim under section 324.021(9)(b)(1), Florida Statutes, as a matter of law.

STANDARD OF REVIEW

The issue presented herein is a pure question of law, subject to *de novo* review. *See Vargas v. Enterprise Leasing Co.*, 60 So.3d 1037, 1040 (Fla. 2011), cert. denied, 80 USLW 3201 (U.S. 2011).

ARGUMENT

CERTIFIED QUESTION

> DOES THE GRAVES AMENDMENT, 49 U.S.C. §30106, PREEMPT SECTION 324.021(9)(B)(1) FLORIDA STATUTES (2002)?

On August 10, 2005, President Bush signed into law the so-called"Graves Amendment," an integral part of the National Traffic Safety and Motor Vehicle Act. *See* 49 U.S.C. § 30106 (2005). The Graves Amendment is a federal law which eliminates a lessor's liability under any state law which imposes liability on a vehicle lessor based solely on ownership of the vehicle, provided there is no negligence or criminal wrongdoing on the part of the lessor. *See id.* Congress enacted the law to correct an inequity in the motor vehicle leasing industry by establishing a uniform, national standard eliminating no-fault vicarious liability, while retaining liability for lessors based on fault. *See* Appendix A, Congressional Record at H1200.

Specifically, the Graves Amendment provides:

> (a) **In general** -- 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 motor 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) (2007). Many courts have reviewed different aspects of the Graves Amendment that are relevant here and which are discussed below.

First, it is well-settled that the Graves Amendment is constitutional. *See e.g*., *Vargas v. Enterprise Leasing Co.*, 60 So3d 1037, 1043 (Fla. 2011); *Rosado, supra*, 1 So.3d at 1204; *West v. Enterprise Leasing Co.,* 997 So.2d 1196, 1197 (Fla. 2d DCA 2008); *Karling v. Budget Rent A Car,* 2 So.3d 354, 355 (Fla. 5th DCA 2008); *Bechina v. Enterprise Leasing,* 972 So.2d 925, 927 (Fla. 3d DCA 2007); *Garcia v. Vanguard Car Rental USA, Inc.*, 510 F.Supp.2d 821, 835 (M.D.Fla. 2008), *aff'd* ,540 F.3d 1242 (11th Cir. 2008); *Dupuis v. Vanguard Car Rental USA, Inc.*, 510 F.Supp.2d 980, 985 (M.D.Fla. 2007); *Liberty Mutual Ins. Co. v. TCF Equipment Finance, Inc*., 2007 WL 4557204, at *3 (M.D.Fla. Dec. 20, 2007); *Berkan v. Penske Truck Leasing Canada, Inc.*, 535 F.Supp.2d 341, 345 (W.D.N.Y. 2008); *Graham v. Dunkley*, 50 A.D.3d 55, 62 (N.Y.A.D. 2 Dept. 2008); *Castillo v. Bradley*, 851 N.Y.S.2d 56, 57 (N.Y. Sup. Ct. 2007); *Jasman v. DTG Operations, Inc.*, 533 F.Supp.2d 753, 757 (W.D.Mich. 2008); *Seymour v. Penske Truck Leasing Co.*, 2007 WL 2212609, at *2 (S.D.Ga. Jul. 30, 2007); *Flagler v. Budget Rent A Car,* 538 F.Supp.2d 557, 560 (E.D.N.Y. 2008); *Rodriguez v. Testa*,

993 A.2d 955, 969 (Conn. 2010).

Second, the clear and unequivocal language of this federal statute leaves no doubt that it was intended to preempt all state laws imposing vicarious liability on lessors based on ownership of the leased vehicle. Indeed, all of the Florida courts that have addressed whether the Graves Amendment preempts Florida state law have unequivocally concluded that it does. *See Vargas*, *supra*, 60 So.3d at 1043 (federal preemption as to section 324.021(9)(b)(2) for short term leases); *Rosado*, *supra*, 1 So.3d at 1206 (federal preemption as to section 324.021(9)(b)(1) for long term leases); *Kumarsingh v. PV Holding Corp.*, 2008 WL 238955, at *1 (Fla. 3d DCA 2008) ("the Graves Amendment, by its clear and unambiguous wording, supersedes and abolishes all state vicarious liability laws as they apply to lessors of motor vehicles"); *Bechina*, *supra*, 972 So.2d at 926, (upholding the preemptive language of the Graves Amendment); *Liberty Mutual Ins. Co. v. TCF Equip. Fin., Inc.*, 2007 WL 4557204, at *3 ("the Graves Amendment preempts Liberty Mutual's common law claims of vicarious liability"); *Dupuis v. Vanguard Car Rental USA, Inc.*, 510 F.Supp.2d 980, 984 (M.D.Fla. 2007) ("The Graves Amendment is a clear expression of congressional intent to preempt Florida's dangerous instrumentality doctrine as applied to short-term motor vehicle lessors."); *Garcia*, *supra*, 510 F.Supp.2d at 829 ("By its express language, the Graves Amendment preempts all state statutory and common law to the extent

those laws hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers").

Other jurisdictions have reached similar conclusions as well. *See e.g.*, *Graham*, *supra*, 2008 WL 269527, at *4 (upholding the preemptive language of the Graves Amendment and concluding that "actions against rental and leasing companies based solely on vicarious liability may no longer be maintained"); *Merchants Ins. Group v. Mitsubishi Motor Credit Assoc.*, 2008 WL 203195, at *3 (E.D.N.Y. Jan. 23, 2008) ("the application of [Vehicle and Traffic Law] Section 388 to lessors, such as defendants, has been preempted by federal law"); *Castillo v. Bradley*, 2007 WL 2874960, at *2 (N.Y. Sup. Ct. 2007) ("there is ample authority to the effect that the Graves Amendment has preempted New York State Vehicle and Traffic Law"); *Infante v. U-Haul Co. of Florida*, 815 N.Y.S.2d 921 (N.Y. Sup. Ct. 2006) ("This law, and specifically the 'Graves Amendment', resolved a long-standing debate as to the propriety of imposing vicarious liability on car owners who rent or lease their vehicles which are subsequently involved in motor vehicle accidents. By enacting the Graves Amendment, Congress has prohibited vicarious liability against these owners and preempted the laws in states, such as New York, that previously permitted it."); *Davis v. Ilama*, 2006 WL 1148702, at *4 (Conn. Sup. Ct. 2006) ("30106 prohibits claims of vicarious liability against vehicle rental companies and preempts laws in states that previously permitted vicarious

liability"); *Piche v Nugent*, 2005 WL 2428156, at *3 (D.Me. Sept. 30, 2005) ("Among other things, section 30106 amends U.S. Code Title 49, Chapter 301 to preempt state statutes that impose vicarious liability on rental car companies for the negligence of their renters.").

Importantly, the legislative history of the Graves Amendment specifically identifies Florida as one of the states the federal law was intended to preempt. *See* Appendix A, Congressional Record at H1200 ("Anybody, Republican or Democrat, who is from Arizona ... Florida, Idaho ... should not vote for this amendment, Republican or Democrat, unless you want to say to your State legislators: We are going to preempt the law of New York, of California, of Florida, wherever, because we know better.").

In this case, it is undisputed that Rosado is seeking to hold DCFS Trust vicariously liable as the "owner" of the subject vehicle under Florida's dangerous instrumentality doctrine based on the lessee's failure to maintain certain insurance limits on the leased vehicle pursuant to section 324.021(9)(b)(1). The Graves Amendment, therefore, facially applies to preclude Rosado's liability claim against DCFS Trust. Thus, the issue now appears to turn solely on whether section 324.021(9)(b)(1) falls within one of the two "financial responsibility law" exceptions to the Graves Amendment, which provide:

> (b) **Financial responsibility laws** – 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 insurance requirements under State law.

49 U.S.C. § 30106(b) (2007). As is discussed below, the district court below correctly determined that section 324.021(9)(b)(1) does not fall within the "financial responsibility law" exception and is, therefore, preempted by the Graves Amendment.

A. Section 324.021(9)(b)(1) is not a financial responsibility law that imposes financial responsibility or insurance standards on lessors for the privilege of registering and operating a motor vehicle.

This question is no longer an issue of first impression in Florida following the *Rosado* decision. However, without citing any authority from this or any other jurisdiction contrary to the holding in *Rosado*, Rosado simply concludes that under her reading of section 324.021(9)(b)(2) that the section "imposes liability if the lessor fails to have insurance on the vehicle. Initial Brief on the Merits at 12-13 (emphasis added). Such a contention is without merit for the following reasons, including that the statute does not *require* the vehicle lessor to do anything.

By way of background, Florida's common law dangerous instrumentality doctrine imposes strict vicarious liability on the "owner" of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another. *See Southern Cotton Oil Co. v. Anderson*, 86 So. 629, 631 (Fla. 1920). The dangerous instrumentality doctrine was extended to lessors in 1959, making them vicariously liable for the lessee's negligent operation of the motor vehicle. *See Susco Car Rental System v. Leonard*, 112 So.2d 832, 837 (Fla. 1959). In 1986, the Florida Legislature enacted section 324.021(9)(b), Florida Statutes, which created a statutory exception to the dangerous instrumentality doctrine for lessors if certain voluntary insurance criteria were satisfied. Specifically, section 324.021(9)(b) provides:

> **(9) Owner; owner/lessor.—**
> ….
> (b) *Owner/lessor* – Notwithstanding any other provision of the Florida Statutes or existing case law:
>
> 1. The lessor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than $100,000/$300,00 bodily injury liability and $50,000 property damage liability or not less than $500,000 combined property damage liability and bodily injury liability, shall not be deemed the owner of said motor vehicle for purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith; further, this subparagraph shall be applicable so long as the insurance meeting these requirements is in effect. The insurance meeting such requirements may be obtained by the lessor or lessee,

> provided, if such insurance is obtained by the lessor, the combined coverage for bodily injury liability and property damage liability shall contain limits of not less than $1 million and may be provided by a lessor's blanket policy.
>
> 2. 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 to $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 additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this subparagraph shall be construed to affect the liability of the lessor for its own negligence.

Fla. Stat. § 324.021(9)(b) (2007).

Section 324.021(9)(b)(1) is the long-term lessor statute at issue in this case. That section enables a long-term lessor to eliminate its vicarious liability as the "owner" of the vehicle under the common law dangerous instrumentality doctrine *if* the lessee or lessor maintains the specified insurance limits. *See Abdala v. World Omni Leasing*, 583 So.2d 330, 334 (Fla. 1991) ("the legislature, by enacting subsection 324.021(9)(b), simply redefined 'owner' of a motor vehicle so as to exclude a long-term lessor upon satisfaction of the statutory preconditions");

Kraemer v. General Motors, 572 So.2d 1363, 1366 (Fla. 1990) ("in 1986, the legislature did act to eliminate long-term automobile lessors from liability under the dangerous instrumentality doctrine under certain circumstances by the passage of chapter 86-229"). On the other hand, *if* the specified insurance limits are not maintained, then the lessor remains the "owner" of the vehicle and has unlimited vicarious liability under the dangerous instrumentality doctrine.

The well-reasoned opinion as set out in *Rosado v. DaimlerChrysler Financial Services Trust* below is completely dispositive as to whether Rosado can maintain such a claim against DCFS Trust in the instant case because neither provision of the savings provision of the Graves Amendment applies. Section 324.021(9)(b)(1) does not "impose financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle." *See Rosado*, 60 So.3d at 1043. It also does not "impose 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." *See id.*

Instead, section 324.021(9)(b)(1) merely gives the long term leasing company *the option to* have insurance in place to avoid liability in Florida under the dangerous instrumentality doctrine. Because the statute *does not compel* a lease car company to have certain "insurance standards," this statute does not

impose liability for a "failure" to meet insurance standards that *are only optional*. The *option* the long term lessor has to require the lessee procure 100/300 insurance is just a business decision for the long term lessor as to whether it wants to lease more cars, by not enforcing the 100/300 insurance so there is less overall expense to the lessee as part of the lease transaction, or have the risk of unlimited vicarious liability. This business decision of the long term lessor is not even remotely close to any traditional notion of what a financial responsibility insurance law is. For these reasons, the Graves Amendment bars Rosado's vicarious liability claim based on section 324.021(9)(b)(1) against DCFS Trust as a matter of law. *See id*. at 1206.

This Court also recently rendered an opinion in the case of *Vargas v. Enterprise Leasing Co.*, 2011 WL 1496474 at *5 (Fla. April 21, 2011), where it held that section 324.021(9)(b)(2) is not a financial responsibility law falling within the savings provision of the Graves Amendment. Such a holding is consistent with other Florida decisions concluding that section 324.021(9)(b), as it applies to both long-term and short-term lessors, does *not* constitute a "financial responsibility law" falling within the savings clause of the Graves Amendment. *See, e.g., St. Paul Fire and Marine Ins. v. Lee*, 2008 WL 1897602, at *4 (M.D. Fla. Apr. 28, 2008) (holding that 324.021(9)(b)(1) pertaining to long-term lessors is not a financial responsibility statute); *West v. Enterprise Leasing Co., supra*, 997 So.2d

at 1197 ("As a vicarious liability provision, section 324.021(9)(b)(2) is not a law 'imposing financial responsibility or insurance standards' within the meaning of the savings clause of the Graves Amendment"); *Vargas v. Enterprise Leasing Co.*, 993 So.2d 614, 622 (Fla. 4th DCA 2008) ("section 324.021(9)(b)(2) is thus neither a financial responsibility statute nor an insurance requirement"), *aff'd*, 2004 WL 1496474 at *1; *Kumarsingh*, *supra*, 983 So.2d at 599 (the Graves Amendment preempts section 324.021(9)(b)(2) pertaining to short-term lessors); *Bechina*, *supra*, 972 So.2d at 925 (same); *Dupuis*, *supra*, 510 F. Supp. 2d at 980 (same); *Karling*, *supra*, 2 So.3d at 354 (same); *Tocha v. Richardson*, 995 So.2d 1100 (Fla. 4th DCA 2008) (same); *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1249 (11th Cir. 2008) ("In sum, neither the common law imposition of vicarious liability on rental car companies, nor the Florida legislature's endorsement of an limitations on such vicarious liability, constitutes a 'financial responsibility' requirement."); *Garcia v. Geico General Ins. Co.*, 2010 WL 1982923 at *4 (S.D. Fla. May 10, 2010) (discussing section 324.021(9)(b)(2) pertaining to short-term lessors and recognizing, "Given the Graves Amendment, Ms. Garcia cannot sue Enterprise or its insurer for Ms. Penafiel's death.").

Notwithstanding the foregoing authorities, Rosado basically argues that

Count III is not preempted[1] by the Graves Amendment because subsection 324.021(9)(b)(1) constitutes a "financial responsibility law." In support of this contention, Rosado appears to argue that subsections 324.021(9)(b)(1) and 324.021(9)(b)(2) are worded differently because subsection 324.021(9)(b)(1) uses the term "requirements" in reference to the insurance that may be obtained by the lessee or long term lessor to satisfy that provision, which requires this Court to disregard the cases that have already concluded that subsection 324.021(9)(b)(2) is not a financial responsibility law. Rosado's arguments should be rejected for the following reasons.

First, the term "requirements" as used in subsection 324.021(9)(b)(1) does not have anything to do with financial responsibility laws related to the "privilege of registering and operating a motor vehicle," or which "impose 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," such that the savings provision would apply. Instead, the term "requirements" as used in subsection 324.021(9)(b)(1) addresses

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[1] As an alternative to a penalty of unlimited vicarious liability, Rosado argues that this Court could interpret subsection 324.021(9)(b)(1) as imposing only liability of $1,000,000 on the long term lessor. *See* Initial Brief on the Merits at 17. There is no authority supporting such a proposition, particularly where Congress, by its clear and unambiguous wording, has expressly preempted, superseded and abolished all state vicarious liability laws as they apply to lessors of motor vehicles.

the optional type of insurance coverage that either the long term lessor or the lessee may obtain to avoid vicariously liability under the dangerous instrumentality doctrine, which is in direct conflict with and is preempted by the Graves Amendment.

Second, there is no reason to treat the long-term subsection any differently than the short-term section when analyzing whether the "financial responsibility law" exception applies. Such a contention was expressly rejected by the district court below. *See Rosado*, *supra*, 1 So.3d at 1205 (noting that, "Subsection (b)(1) is similar" to subsection (b)(2)). Both subsections create a statutory exception to Florida's common law dangerous instrumentality doctrine depending on the voluntary insurance carried by the driver or lessor: one caps the amount of the lessor's vicarious liability under the dangerous instrumentality doctrine (the short-term section); and the other eliminates the lessor's liability under the dangerous instrumentality doctrine if the specified limits are in effect or retains limitless vicarious liability if they are not (the long-term section). Importantly, neither imposes on lessors minimum insurance requirements or proof of financial responsibility for the privilege of registering and operating vehicles in Florida.

In addition, DCFS Trust notes that the fact that section 324.021(9)(b)(1) appears in the chapter entitled "Financial Responsibility" is of no significance since that chapter does, in fact, have a financial responsibility requirement, being

section 324.021(7), Florida Statutes. That section sets forth the mandatory minimum insurance requirements in Florida by requiring "proof of ability to respond in damages for liability on account of crashes arising out of the use of a motor vehicle" in the amount of $10,000/$20,000 in bodily injury coverage and $10,000 in property damage coverage. There is no similar mandatory financial responsibility requirement in section 324.021(9)(b). *See Vargas*, *supra*, 993 So.2d at 620-22.

For these reasons, the savings provision under 49 U.S.C. § 30106(b)(1) would not apply to Rosado's claim against DCFS Trust.

B. Section 324.021(9)(b)(1) is not a financial responsibility law imposing liability on lessors for failing to meet financial responsibility or liability insurance requirements under Florida law.

The district court below was also correct to the extent it expressly determined that section 324.021(9)(b)(1) did not fall within the second exception the Graves Amendment, *i.e.*, a financial responsibility law imposing liability on lessors for failing to meet certain financial responsibility or insurance requirements. *Rosado*, 1 So.3d at 1205. Therefore, it was proper to conclude that this exception to the Graves Amendment did not apply.

A more detailed analysis of this exception under the Graves Amendment was undertaken in the case of *Garcia v. Vanguard Car Rental USA, Inc.*, 510

F.Supp.2d 821, 832 (M.D. Fla. 2008), where the district court noted that section 324.021(9)(b)(2) pertaining to short-term lessors does not impose liabilities or penalties on lessors who fail to maintain the specified levels of insurance. The district court recognized, however, that there are other Florida laws that impose such penalties. *See id.* For instance, section 324.051, Florida Statutes, "authorizes the state to suspend the license and registration of a motor vehicle owner or operator who does not have the required minimum levels of motor vehicle insurance at the time of an accident. Under this provision, an owner or operator of a motor vehicle is directly penalized for not having sufficient levels of insurance." *Id.* at 832. The district court further noted:

> The Court is unaware of any Florida financial responsibility or insurance requirement that owners and/or operators of motor vehicles must possess insurance in the amount of $500,000 combined property and personal injury. To the contrary, § 324.021 itself defines the minimum standards for insurance in Florida …Fla. Stat. § 324.021(7). *There is nothing in § 324.021(9)(b)(2) that imposes any penalties or liabilities on lessors of motor vehicles who do not maintain these minimum levels of insurance*.

Id. at 832-33 (emphasis added).

Similarly, DCFS Trust maintains that section 324.0219(b)(1) does not impose any penalty or independent liability on long term lessors for failing to maintain certain minimum insurance limits. In fact, the opposite is true. It actually enables a long term lessor to *eliminate* its vicarious liability *if* certain voluntary

criteria are satisfied. If those criteria are not satisfied, however, the long term lessor maintains its status as the "owner" of the vehicle pursuant to Florida common law. It is essentially a contingency provision creating a cost-benefit risk analysis for long term lessors. *See Rosado*, 1 So.3d at 1205; *Garcia*, 510 F.Supp.2d at 831 ("A lessor could choose to rent to operators who have lower levels of insurance without any consequences or penalties by the state. In such a situation, the lessor would merely assume the risk of possibly being liable for a higher level of damages should an accident and lawsuit ensue."). Long term lessors simply have the *option* of either maintaining the insurance limits *or* assume the risk of being held vicariously liable if the leased vehicle is in an accident, but there are no liabilities or penalties imposed on such lessors for failing to maintain certain mandatory minimum insurance or financial responsibility requirements.

Further, section 324.021(9)(b)(1) does not create statutory liability against long term lessors separate and apart from the dangerous instrumentality doctrine. *See, e.g.*, *Abdala*, *supra*, 583 So.2d at 332 (recognizing that "there is no statutory right to sue a long-term lessor of an automobile for damages an individual suffers as a result of the operation of that automobile"). That is, without the common law dangerous instrumentality doctrine (which has been preempted), section 324.021(9)(b)(1), standing alone, does not impose any independent liability or penalty on long term lessors for failure to comply with financial responsibility

requirements.

For these reasons, the savings provision under 49 U.S.C. § 30106(b)(2) would not apply to Rosado's claim against DCFS Trust.

CONCLUSION

For the reasons stated herein, DCFS Trust urges the Court to uphold the decision of the Second District Court of Appeal and find that the Graves Amendment constitutionally preempts the Florida vicarious liability statute at issue as to long term lessors of motor vehicles.

Respectfully submitted,

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February 3, 2012

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2012, I caused a copy of the foregoing Answer Brief on the Merits to be sent by First Class, U.S. Mail to: **Bard D. Rockenbach**, **Esq.**, Burlington & Rockenbach, P.A., 444 West Railroad Avenue, West Palm Beach, Florida 33401; **Matthew E. Kaplan, Esq.,** Kaplan & Freedman, P.A., 9410 SW 77th Avenue, Miami, Florida 33156; and **Daniel E. Dias, Esq.**, 2002 N. Lois Ave., Ste. 510, Tampa, FL 33607; **Randy Stowell**, Esq., Reynolds & Stowell, P.A., 8700 Fourth Street, St. Petersburg, Florida 33702; **Robert D. Adams, Esq.,** 101 East Kennedy Blvd., Suite 2175, Tampa, FL 33607; and **Louis J. Williams, Esq.**, 59 Lake Morton Drive, P.O. Box, 2836, Lakeland, Florida 33806.

The Original and seven (7) copies have been sent to the Court on the same date via Federal Express, overnight delivery to the following address:

Florida Supreme Court
Attn: Clerk's Office
500 South Duval Street
Tallahassee, FL 32399-1927
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and an electronic copy (in MS Word Format) has been emailed to the Court at: e-file@flcourts.org.

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Eric W. Neilsen

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing computer-generated brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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Eric W. Neilsen

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