UNITED STATES SENATE

COMMITTEE ON

COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY, AND INSURANCE

NHTSA OVERSIGHT: AN EXAMINATION OF THE HIGHWAY SAFETY PROVISIONS OF SAFETEA-LU

TESTIMONY OF

THOMAS M. JAMES

PRESIDENT AND CEO

TRUCK RENTING AND LEASING ASSOCIATION

SEPTEMBER 28, 2010

My name is Tom James. I am president and CEO of the Truck Renting and Leasing Association. I am testifying today on behalf of a broad coalition of companies, trade associations, and other stakeholders who were significantly impacted by state vicarious liability laws before Congress took action in 2005. The breadth and depth of our coalition is conveyed by the fact that our members include the U.S. Chamber of Commerce, the National Federation of Independent Business, the American Trucking Association, and associations representing rental car companies, auto dealers, truck dealers, auto manufacturers and other segments of our industry. (See attached list of supporters of members of the coalition supporting Graves-Boucher.)

The nation's car and truck renting, leasing and sharing industry is an important part of the American economy, supporting jobs and business activity in communities throughout this country.

For instance, in truck renting and leasing, there are about 550 companies, employing 100,000 people, and operating out of about 24,000 locations in the United States. As with leased automobiles, there are few identifying marks to distinguish trucks that are owned by their operators from trucks that are leased or rented by their operators. But one out of every five trucks on the highways is rented or leased.

Meanwhile, rented, leased and shared cars account for a large share of American automobiles. In 2009, the U.S. rental car industry had 1.6 million cars in service at over 16,000 locations. In fact, every year, 22 percent of the purchases of American-made cars and light-duty vehicles are for commercial fleet leasing use.

Our coalition supports the Graves-Boucher provision included in the Transportation Equity Act of 2005. It eliminated liability without fault for vehicle renting and leasing companies. And it preserved the states' ability to enact insurance laws to protect consumers and their right to sue companies for their negligence in the rental or leasing of vehicles.

Over the past five years, Graves-Boucher has had many beneficial effects for consumers, companies, employers and the entire economy. Among other benefits, environmentally friendly car-sharing programs have grown rapidly since the enactment of Graves-Boucher. And consumer auto lessors are offering affordable options for car acquisition in New York, specifically in response to the enactment of Graves Law.

In supporting Graves-Boucher, we believe that we are defending three basic, bedrock concerns: simple fairness, American jobs, and consumer choice.

Before I go any further, let me be clear about what Graves-Boucher does and does not do. To put it plainly, there are no uninsured rental or leased vehicles on the road.

The language in the law emphasizes that states continue to have the right to enact and enforce laws mandating insurance coverage levels for the privilege of operating and registering a vehicle – minimum levels of financial responsibility or MFR. This provision also ensures that states have the right, if they so choose, to set higher levels of MFR for rented or leased vehicles.

To repeat this point, because it is so important: Under these MFR statutes, there are no uninsured consumer rental or leasing vehicles. Each vehicle is covered up to an amount determined by the state to be an appropriate minimum level of insurance. Many consumer auto lease contracts actually require that higher levels of insurance must be held by the lessee. Almost all commercial rental and lease contracts require the lessee to hold levels of insurance significantly higher than the minimum level of financial responsibility.

Moreover, Graves-Boucher does not in any way protect a renting or leasing company from liability for its own negligence. Whether that negligence involves the maintenance of a vehicle or the decision to enter into a rental or lease contract with a specific individual or business, Graves-Boucher offers no protection from liability in these cases. But it does make the system of assigning liability much more fair.

As Americans, we believe that individuals must be held responsible for the consequences of what they do. But the doctrine of vicarious liability imposes liability on non-negligent car and truck renting and leasing companies, or their affiliates, regardless of fault. This doctrine dates back to the days of horse and buggies, when horse and buggy rental operators were supposed to know the personality of their horses.

On the state level, vicarious liability laws arbitrarily transferred liability from a negligent driver to the renting or leasing company – even though that company had no ability to prevent or foresee the accident. It is not fair to impose multimillion-dollar judgments on any entity, whether an individual or corporation, when they have done nothing wrong.

These laws weren't only unfair – they were unworkable in a country comprised of 50 states and an industry as diverse as the nation that it serves.

Please keep in mind that the rented and lease fleet includes: automobiles leased to consumers, generally from three to five years; automobiles rented to consumers for periods of one day to 30 days; automobiles leased to businesses, generally for three years; trucks rented to consumers for periods of one to 30 days; and trucks leased to businesses, usually for one to five years.

There is one thing that all of these lease and rental transactions have in common: The leasing or renting company cannot control where the vehicle is operated -- and in what manner the vehicle is operated – during the term of the lease and rental.

The fact is: We can't even prevent our customers from driving our vehicles across state lines. A company operating in Virginia cannot stop its customers and vehicles from traveling to Maryland, Pennsylvania, New Jersey or New York.

Before Congress preempted the state laws, when customers drove rental cars or trucks across state lines, they were covered by the laws of the states where they are driving. And these laws were a crazy-quilt of differing provisions and penalties.

Combined with our inability to control where and how our cars and trucks were driven, this patchwork of state vicarious liability laws, put non-negligent rental and leasing companies in an untenable situation. We were exposed to liabilities for which there was no best practice, nor any method for protection. We were vulnerable solely because the vehicles that we owned might have been involved in accidents after we gave up control of the vehicles to renters or lessees.

Such laws are not fair. And they destroy American jobs and diminish consumer choice.

In enacting Graves-Boucher, Congress took action five years ago to make sure that these laws no longer injure consumers, working Americans, and businesses large and small. You've heard the saying, "If it ain't broke, don't fix it." You fixed this already. So please don't fix it again.

We know what will happen if the existing law is reversed. Once again, non-negligent companies will be subject to huge claims for damages for which they are not responsible.

For instance, in 1993, two friends rented a car in New Jersey from Freedom River, Inc., a Philadelphia licensee of Budget Rent-A-Car Corporation. The rental agreement identified only the two renters as authorized drivers. But the wife of one of the renters drove the automobile and was involved in a single-car accident in New York. Her sister was seriously injured in the accident. An arbitrator applied New York law and found the defendant and Freedom River liable for $3.75 million. This judgment was affirmed by the New Jersey Supreme Court.

In 1991, four British sailors rented a car from Alamo in Fort Lauderdale, Florida, to drive to Naples. While driving to Naples, the driver of the car fell asleep at the wheel. The car left the road and ended up in a canal. The driver and two passengers were killed. The fourth passenger was seriously injured. Alamo was found vicariously liable for the deaths and injuries due solely to the fact that it owned the vehicle. No negligence for the accident was attributed to Alamo, Alamo was ordered by a jury to pay the plaintiffs $7.7 million. The jury award was affirmed on appeal.

What will happen to consumers if Graves-Boucher is reversed and non-negligent companies are once again subject to huge claims such as these for damages for which they are not responsible? Once again, renting and leasing customers are certain to pay higher costs to cover the actions of all negligent drivers. When state laws were in effect, some renting and leasing companies could not even find affordable insurance to cover them in the case of a vicarious liability claim.

Once again, consumers and businesses are certain to pay high commercial costs for transportation of goods. In the midst of the worst economy in 70 years or more, this puts American jobs at risk.

Once again, small businesses – the most vulnerable car and truck rental companies -- are certain to run the risk of failure when hefty verdicts are assessed to pay for the actions of their at-fault renters. These business failures will take their toll in fewer choices for consumers and fewer jobs for workers.

For example, for 17 years, Sharon Faulkner owned a small car rental company in Albany, New York. Then, one day, she rented a car to a woman who agreed that she would be the only driver of the car. But the woman lent the car to her son, who, without Sharon Faulkner's knowledge, drove the car to New York City. There, he was involved in an accident in which he struck a pedestrian in a crosswalk. Under New York State's vicarious liability law, the injured person sued Sharon Faulkner's company, collecting substantial damages and driving her out of business.

She had not been negligent in any way. She could not have prevented the accident from occurring. But she was held liable and put out of business. (See attached letter from Sharon Faulkner.)

Small car rental companies aren't the only companies that will suffer if the existing law is reversed. Once again, auto manufacturers and leasing companies are certain to suffer severe losses when faced with frivolous lawsuits. For instance, before the Transportation Equity Act of 2005, many companies refused to lease in New York because businesses feared expensive and overly burdensome losses.

Our nation has made a great investment in the survival of our domestic auto industry, and that investment is reaping rewards with the revival of the big three American companies. Why harm the American auto industry – and why jeopardize the jobs of American workers – in order to return to a dubious doctrine that originated in the era of the horse and buggy?

Congress has already debated this issue comprehensively and decided it correctly. Commencing in 1996, Congress reviewed vicarious liability laws, held hearings and considered many proposals. In 1998 Senators Rockefeller and Gordon introduced legislation (S. 2236) which included a vicarious liability provision. On Sept. 30, 1999, this subcommittee held a hearing on Senator McCain's vicarious liability legislation (S. 1130).

In 2005, the House of Representatives passed an amendment that preempted state vicarious liability laws applicable to vehicles, as part of the Highway Reauthorization legislation. This amendment was included in the final version that was enacted into law.

Since 2005, this law has been upheld in several federal court decisions. (See attached summaries of court cases since Graves-Boucher.) For instance, in *Garcia v. Vanguard*

Car Rental USA, Inc., 540 F.3d 1242 (11th Cir. 2008), the Eleventh Circuit upheld the amendment's constitutionality because the statute has a substantial effect on interstate commerce. Let me quote from the court's decision:

> "Congress rationally could have perceived strict vicarious liability for the acts of lessees as a burden on [the rental car] market. . . . The reason it could have done so is that the costs of strict vicarious liability against rental car companies are borne by someone, most likely the customers, owners, and creditors of rental car companies. If any costs are passed on to customers, rental cars . . . become more expensive, and interstate commerce is thereby inhibited. Moreover, if significant costs from vicarious liability are passed on to the owners of rental car firms, it is possible that such liability contributes to driving less-competitive firms out of the marketplace, or inhibits their entry into it, potentially reducing options for consumers."

Let's not take what has been made right and make it wrong again. It is wrong to compel consumers across the nation to pay higher rental rates for misguided vicarious liability laws which became obsolete with the invention of the automobile at the beginning of the last century. It is wrong to deprive consumers of the competition and lower rental rates that smaller operators can offer. It is wrong to return to the days when a car or truck rental company, even one operating outside of a vicarious liability state, could protect itself against exorbitant claims only by going out of business. And it is especially wrong to take actions that would have these consequences in the midst of a national economic crisis.

Thank you for the opportunity to present this testimony today and to speak up for fundamental fairness, for consumer choice, and for American jobs.

Attachments: 1) List of members of the coalition supporting Graves-Boucher; 2) Letter from Sharon Faulkner; 3) Summaries of court cases since Graves-Boucher was enacted; 4) Statement from attorney Mark Perry.

Companies and Organizations that Support the Graves-Boucher Provision

Alamo Rent-A-Car
Ally Financial, Inc.
American Automotive Leasing Association
American Car Rental Association
American Financial Services Association
American Insurance Association
American International Automobile Dealers Association
American Tort Reform Association
American Trucking Association
Association of International Automobile Manufacturers
Avis Budget Group
Chrysler Group LLC
Dollar Thrifty Automotive Group
Enterprise Rent-A-Car
Ford Motor Company
General Electric
General Motors Company
Hertz Corporation
Honda Motor Company
Mazda North American Operations
Motor & Equipment Manufacturers Association
National Association of Manufacturers
National Automobile Dealers Association
National Car Rental
Nissan North America
Penske Truck Leasing Company
Ryder System, Inc.
The Financial Services Roundtable
Truck Renting and Leasing Association
U.S. Chamber Institute for Legal Reform
U.S. Chamber of Commerce

Statement by Sharon Faulkner

September 24, 2010

Chairman John D. Rockefeller IV
Ranking Member Kay Bailey Hutchison
Subcommittee Chairman Mark Pryor
Subcommittee Ranking Member Roger Wicker
Committee on Commerce, Science, and Transportation
Washington, DC 20510

Dear Chairman Rockefeller and Members of the Committee:

I represent one of the many business owners who were significantly impacted by state vicarious liability laws prior to Congress taking action in 2005. Therefore, I write in support of the provision included in the TEA-LU legislation that eliminated liability without fault for vehicle renting and leasing companies, and yet preserved the states' ability to enact insurance laws to protect consumers and their ability to sue companies if they are found to be negligent in the rental or leasing of vehicles.
For seventeen years, until 1997, I was a small business owner operating an independent car rental company in upstate New York. The company, Capitaland Rent a Car, was headquartered in Albany. During those years, thanks to the hard work of my employees and the loyalty of local customers, my company survived two recessions and fierce competition.

That situation changed one day in 1997 when I was notified that I and my company were being sued for an accident involving one of my rental cars that occurred over a year previously. Capitaland had rented a car in 1996 to a customer who possessed a valid New York driver's license. As part of Capitaland's standard rental agreement, the customer agreed that she would be the only driver of the car. My customer then loaned the car to her son who was an unauthorized driver under the rental agreement. The renter's son, without her knowledge, drove the car to New York City, where our car was involved in an accident in which a pedestrian was struck in a crosswalk. The injured person sued our company for the son's negligence in causing the accident.

This lawsuit caught me completely by surprise because when I checked my records, I found that the rental vehicle had been returned to us without any damage. As a result, I had no idea that an accident had ever occurred or that a person had ever been injured. Nevertheless, Capitaland was named as a codefendant in the lawsuit, which demanded enormous amounts of money to pay medical bills and compensate the injured person for his pain and suffering.

You might wonder how it was that my company was sued for the accident. We rented to a licensed driver, the renter loaned the car to an unauthorized driver. It was the unauthorized driver, a person that neither I nor any of my employees ever had a chance to meet, that caused the accident that injured the pedestrian. We weren't negligent in any

way and I could not have prevented the accident from occurring. Therefore, how could I have been liable?

However, New York was one of a very small minority of states that held companies that rent motor vehicles liable for the negligence of persons who drive their vehicles whether that person is a customer or not. In these states a car rental company could have been assessed unlimited damages by a court under the legal doctrine of vicarious liability if one of its cars were involved in an accident in which the driver of the car was negligent. Simply because we owned the car, New York law held my company liable for the negligence of the renter.

For me this lawsuit was a final straw. At the time I was a mother with three small children; and Capitaland was our sole means of support. I found it incredible that I could lose everything I had worked to achieve for 17 years because of an accident for which I wasn't at fault. In effect, every time I rented a car to a customer I was putting my family's future on the line in the hope that the customer did not drive the car negligently and cause an accident.

So I made the decision to sell my company, and in the end, all of my former employees were laid off. The result: another independent car rental company disappeared in New York. But my company wasn't alone. Capitaland was one of over 300 car rental companies that closed in New York while vicarious liability laws were in place.

Vicarious liability for companies that rent or lease motor vehicles is unfair and contrary to one of our Nation's fundamental pillars of justice, that a person should be held liable only for harm that he or she causes or could have prevented in some way. TEA-LU legislation put a stop to this legal lottery, preempting state vicarious liability laws, but preserving the states' ability to enact insurance laws to protect consumers and consumers' ability to sue companies for their negligence in the rental or leasing of vehicles. It's too late to help my former company, but Congress can see to it that it doesn't happen again to someone else by preventing the vicarious liability doctrine from rearing its head once more.

Sincerely,

Sharon Faulkner
Former small business owner of Capitaland Rent a Car, an independent car rental company in New York
54 Canterbury Road
Clifton Park, NY 12065

Update on Judicial Action Involving Federal Law Eliminating Vicarious Liability (the Graves Amendment)

Court cases continue to be filed following the enactment of federal vicarious liability preemption on August 10, 2005 challenging the authority of the law known as the Graves Amendment. The following are brief summaries of the major cases in which courts have issued rulings. The Industry Council for Vehicle Renting and Leasing is tracking these and other court cases where application and/or interpretation of the federal vicarious liability repeal statute is involved. TRALA and the Industry Council have filed amicus briefs on behalf of the industry in eight of these cases, seven of which have subsequently resulted in positive decisions (*Graham v. Dunkley and NILT, Inc., Garcia v. Vanguard, Bechina v. Enterprise Leasing Company, Kumarsingh v. PV Holding and Avis Rent-A-Car System, Merchants Insurance Group v. Mitsubishi Motor Credit Association, Poole v. Enterprise Rent-A-Car, and Meyer vs. Enterprise Rent A Car*). One case in which TRALA and the Industry Council have filed amicus brief is still pending (*Vargas v. Enterprise Leasing Company).*

***Merchants Insurance Group v. Mitsubishi Motor Credit Association* – U.S. District Court, Eastern District of New York**
POSITIVE DECISION

On December 16, 2009 the U.S. Court of Appeals for the Second Circuit reversed an earlier decision of the United States District Court for the Eastern District of New York by vacating the District Court's judgment. The case was an appeal by Merchant's Insurance Group to the U.S. Court of Appeals, and on March 3, 2008, TRALA filed an amicus brief supporting Mitsubishi Motor Credit Association (MMCA) and arguing that the Graves Amendment preempted New York State's vicarious liability law, as the District Court had previously ruled. However, the Court of Appeals ruled that the original lawsuit in the case commenced before the Graves Amendment became federal law, so the preemption should not apply to this case. U.S. Court of Appeals Decision

The U.S. Court of Appeal's ruling vacated the ruling by the District Court for the Eastern District of New York, which had ruled in favor of MMCA on September 25, 2007, by granting their motion for summary judgment based on the preemptive nature of the Graves Amendment (49 USC 30106) over New York vicarious liability law. In granting MMCA's motion for summary judgment, the District Court stated the "courts have consistently held that the Graves Amendment prohibits states from imposing vicarious liability on owner-lessors such as defendants where the lessor is not negligent." Addressing the constitutionality of the federal statute, the court stated that " to date, only one court has found the Graves Amendment unconstitutional. . .Graham [v. Dunkley], however, has not been followed by any other court. To the contrary, a number of courts have explicitly found the statute constitutional."

It is important to note that even though the U.S. Court of Appeals' ruling reversed the District Court ruling that affirmed the Graves Amendment, the Court of Appeal's decision does not challenge the authority of the Graves Amendment. In the ruling the Court of Appeals specifically stated that "In the instant case, there is no dispute that, if

Merchant's suit against MMCA was commenced after the Graves Amendment's effective date, the Graves Amendment preempts New York law and precludes Merchants' claim."

***Meyer vs. Enterprise Rent A Car* – Minnesota Court of Appeals**
POSITIVE DECISION – POSITIVE RULING ON APPEAL
POSITIVE DECISION IN MINNESOTA SUPREME COURT

On January 20, 2009, the Minnesota Court of Appeals affirmed an earlier decision of the Otter Tail County District Court of Minnesota which granted Enterprise's motion for summary judgment in favor of Enterprise in *Meyer v. Enterprise Rent-A-Car.* In the Minnesota Court of Appeals, the judge rejected Meyer's contention that Minnesota Statutes § 169.09, subd. 5a, and Minnesota Statutes § 65B.49 subd. 5a(i)(2), which established caps on vicarious liability, were preserved by the Graves Amendment's savings clause which exempts "financial responsibility laws" from federal preemption. The Court of Appeals affirmed the decison of the District Court ruling that the existing statutes that established caps on vicarious liability are not financial responsibility laws and are not preserved by the Graves Amendment, the federal law codified at 49 U.S.C. § 30106.

In a subsequent appeal the Minnesota Supreme Court issued a ruling that upheld the decision of the Minnesota Court of Appeals on January 14, 2010. In its ruling, the Supreme Court stated that "We conclude that there is nothing ambiguous about the statute. Minn. Stat. § 169.09, subd. 5a, is not a financial responsibility law that limits, or conditions liability of the rental-vehicle owner for failure to meet insurance-like requirements or liability insurance requirements within the meaning of the (b)(2) savings clause... Because there are no financial responsibility laws incorporated into subdivision 5a, we conclude that the statute does not fall within the (b)(2) savings clause.

***Vargas v. Enterprise Leasing Company* - Fourth District Court of ppeal of the State of Florida**
POSITIVE DECISION - POSITIVE RULING ON APPEAL
APPEAL PENDING IN FLORIDA SUPREME COURT

On October 31, 2008, the Florida District Court of Appeal for the Fourth District affirmed an earlier trial court decision granting a motion for summary judgment in favor of Enterprise Leasing Company in the *Vargas v. Enterprise* case. The motion was granted pursuant to Enterprise's claim that it could not be held vicariously liable due to the federal law known as the Graves Amendment (49 US 30106). The plaintiff contended that Florida Statute section 324.021(9)(b)2, which sets caps on vicarious liability, was preserved by the Graves Amendment's provision that exempts "financial responsibility laws" from the federal law's pre-emption. The appellate court stated in its decision that "section 324.031(9)(b)2 is not the type of law that Congress

intended to exclude from preemption." The court went on further to say that the "Florida legislature's endorsement of and limitations on the vicarious liability imposed under the dangerous instrumentality doctrine is not a financial responsibility requirement."

***Vanguard Car Rental USA, Inc v. Huchon* – U.S. District Court, Southern District of Florida**

NEGATIVE DECISION – POSITIVE RULING COMPELLED BY U.S. COURT OF APPEALS FOR 11TH CIRCUIT

On September 14, 2007, the United States District Court for the Southern District of Florida denied both a motion (by federal court defendant Huchon) to dismiss Vanguard's Petition for Declaratory Judgment and a motion (by federal court plaintiff Vanguard) for Summary Judgment.

The court denied Huchon's motion to dismiss based on several provisions of law not directly related to vicarious liability or 49 US 30106 (the Graves Amendment). In considering Vanguard's Petition for Declaratory Judgment, the court ruled that Huchon's claim was not being made pursuant to Florida statute limiting liability of companies renting a vehicle for less than one year (Florida Statute Section 324.021). Instead the court ruled that the claim was being made pursuant to Florida's Doctrine of Dangerous Instrumentality. Therefore, the court declared that "the only remaining issue is whether [the Graves Amendment] is constitutional."

The court cited its disagreement with the March 5, 2007 ruling by the U.S. District Court for the Middle District of Florida in the *Garcia v Vanguard* case in which the Graves Amendment was found to be constitutional under three separate tests of the U.S. Congress' authority under the Commerce Clause. The court in *Vanguard v Huchon* held that "the direct language of 49 US 30106(b) regulates tort liability and does not directly regulate either channels of interstate commerce or the use of those channels." Further, the court ruled that the Graves Amendment "does not regulate the use of instrumentalities of interstate commerce." The court uses these findings to rule that "Congress exceeded the authority granted by the Commerce Clause when it enacted 49 US 30106." Based on this conclusion, the court denied Vanguard's Petition for Declaratory Judgment.

On March 12, 2009, The United States District Court for the Southern District of Florida, reversed its September 14, 2007 decision and ruled in favor of Vanguard Car Rental. In its Final Judgment, the federal court ruled that the "vicarious liability claim is prohibited by the Graves Amendment…This case remains closed [and] all pending motions are denied as moot." The court was compelled to reverse its earlier decision by the August 19, 2008 ruling of the U.S. Court of Appeals for the 11th Circuit in *Garcia v. Vanguard.* In that decision, the Graves Amendment was determined to be constitutional under all three categories of Congress' powers under the Commerce Clause. The federal appellate court in *Garcia* also ruled that Florida's statutes setting caps on vicarious liability were not financial responsibility statutes preserved by the Graves Amendment and were pre-

empted by the federal law. All federal District courts in Alabama, Florida and Georgia must follow the U.S. Court of Appeals decision in *Garcia v. Vanguard.*

Graham v. Dunkley and Nilt, Inc. **– Supreme Court – Queens County, New York**
NEGATIVE DECISION – POSITIVE RULING ON APPEAL
POSITIVE RULING BY NEW YORK COURT OF APPEALS

On September 11, 2006, the Supreme Court in Queens County, New York denied a motion made by Nissan Infiniti, LT in *Graham v. Dunkley and Nilt, Inc.* to dismiss a vicarious liability claim. The motion to dismiss was based on the federal statute (49 USC 30106) that prohibits states from imposing liability solely on the basis of ownership. Judge Thomas Polizzi, in denying the motion, held that the federal statute "is unconstitutional exercise of congressional authority under the Commerce Clause of the United States Constitution, Article I, Section 8." The action in *Graham v. Dunkley and Nilt, Inc.* was the first case in which a court has ruled against the constitutionality of the federal statute.

The trial court decision in *Graham v Dunkley* was reversed by the Appellate Division, Second Judicial Department of the Supreme Court on February 1, 2008. In its decision, the appellate court stated that "we agree with the weight of precedent that the Graves Amendment was a constitutional exercise of Congressional power pursuant to the Commerce Clause of the United States Constitution." The appellate court declared unequivocally that "actions against rental and leasing companies based solely on vicarious liability may no longer be maintained."

On April 29, 2008, New York State's highest court, the NY Court of Appeals, dismissed the plaintiff's appeal of the lower appellate court decision upholding the Graves Amendment. This action strongly affirms the authority of the Graves Amendment to preempt New York's unlimited vicarious liability law.

Bechina v. Enterprise Leasing Company – Circuit Court of the 11th Judicial Circuit – Miami Dade County, Florida
POSITIVE DECISION – POSITIVE RULING ON APPEAL

On April 24, 2007, the court granted a Motion for Summary Judgment made by defendant Enterprise Leasing Company. In granting the motion, the court agreed with the Enterprise arguments detailing the preemptive authority of the 49 US 30106 (the Graves Amendment). The court also agreed with the defendant that Florida's statute capping vicarious liability involving motor vehicles rented for less than one year (Section 324.021) is not a financial responsibility statute preserved by the Graves Amendment language.

Florida's Third District Court of Appeals on December 12, 2007 upheld the preemptive authority of the Graves Amendment (49US30106) by affirming the 11th Circuit Court

decision. In its opinion, the appellate court held that "motor vehicle leasing transactions unquestionably affect the channels of interstate commerce, the instrumentalities of interstate commerce, and intrastate activities substantially related to interstate commerce."

Traitouros v Wheels, Inc., Hoffman, La Roche and The La Roche Group **- Supreme Court, Nassau County, New York**
POSITIVE DECISION

On October 23, 2007, the Supreme Court, Nassau County, New York, granted defendant Wheels, Inc.'s motion to dismiss the plaintiff's claim of vicarious liability pursuant to New York's Vehicle Traffic Law Section 388. In response to the defendant's motion based on the preemptive authority of Graves Amendment (49 USC 30106), the plaintiff cited the *Graham v. Dunkley* decision as an example that the New York Courts "have not had one view on this issue." In its order granting the motion to dismiss, the court stated that "this Court does not share the view held only by the *Graham v Dunkley Court*. Rather, for the purposes of deciding this motion, the Federal statute is constitutional."

Deopersad Kumarsingh and Rosalie Kumarsingh, his Wife v. PV Holding Corporation and Avis Rent A Car System, Inc. **– Circuit Court of the 11th Judicial Circuit – Miami-Dade County, Florida**
POSITIVE DECISION – POSITIVE RULING ON APPEAL
POSITIVE RULING BY FLORIDA SUPREME COURT

On October 13, 2006, citing the Graves Amendment's preemption of state vicarious liability laws, Miami-Dade County Circuit Judge Michael A. Genden rendered a final judgment for the defendant ruling that they cannot be held vicariously liable for damages caused by their customer operating a rented vehicle. In his ruling, Judge Genden stated "the 'Graves Amendment' has abrogated vicarious liability of automobile lessors in the state of Florida effective August 10, 2005 and, therefore,…the defendants cannot be vicariously liable to plaintiffs…" Judge Genden went on to state that "the maximum liability for short term automobile lessors in section 324.021(9) Fla. Stat. are 'caps' on vicarious liability and are not 'financial responsibility' requirements for the privilege of owning/operating a motor vehicle in the state of Florida."

On October 3, 2007, Florida's Third District Court of Appeals ruled to affirm the October 13, 2006 decision of the Circuit Court of the 11th Judicial Circuit-Miami-Dade County. In its opinion, the Court of Appeals stated that "the trial court correctly concluded that the Graves Amendment, by its clear and unambiguous wording, supercedes and abolishes state vicarious liability laws."

On May 19, 2008 the State of Florida's highest court, the Florida Supreme Court, denied the plaintiff's request to consider another appeal of the two lower decisions upholding the authority of the Graves Amendment.

Castillo v. Bradley and U-Haul Company of Oregon **–Supreme Court, Kings County, New York**
POSITIVE DECISION

On October 2, 2007, the Supreme Court, Kings County, New York granted defendant U-Haul's motion to dismiss plaintiff's vicarious liability claim. In granting the motion, the court affirmed the preemptive authority of federal statute 49 US 30106 and the constitutionality of the law.

In its decision, the court stated that "there is ample authority to the effect that the "Graves Amendment" has preempted" New York's vicarious liability law. The court also states that "the constitutionality of the statute has been upheld in two out of the three federal court cases found to have considered the question" calling those cases "persuasive and controlling."

Seymour v. Penske Truck Leasing Company **– U.S. District Court, Southern District of Georgia, Savannah Division**
POSITIVE DECISION

On July 30, 2007, the U.S. District Court, Southern District of Georgia, Savannah Division, granted defendant Penske Truck Leasing Company's motion for summary judgment against the plaintiff's claim for damages. The court found that Penske was not liable for the actions of a driver not authorized to operate the vehicle under the rental agreement. The federal court also found that the Graves Amendment is a constitutional federal statute. In its decision, the court states that it has "no trouble concluding that 49 USC 30106…regulates commercial transactions (rentals or leases) involving instrumentalities of interstate commerce (motor vehicles – "the quintessential instrumentalities of modern interstate commerce").

Iljazi v. Dugre, et al. (Enterprise Rent-A-Car) **– Superior Court, Waterbury, Connecticut**
POSITIVE DECISION

On April 13, the Superior Court of Connecticut Waterbury District granted defendant Enterprise Rent-A-Car's motion to strike the plaintiff's vicarious liability count against the company. Enterprise based its motion on the "Graves Amendment's" preemption of Connecticut's vicarious liability statute. The court cited *Davis v. Illama* and *Dorsey v. Beverly, supra* in its decision to strike the vicarious liability count against Enterprise.

The plaintiff filed an objection to the motion to strike the count on the grounds that the Graves Amendment violates the Commerce Clause of the U.S. Constitution. The plaintiff cited the decision of the New York Supreme Court, Queens County in *Graham v. Dunkley* as authority for its claim. In response to the objection, the court quotes from a 1989 decision in *Bottone v. Westport…*"(I)n passing upon the constitutionality of a legislative act, we will make every presumption and intendment in favor of its validity…The party

challenging a statute's constitutionality has a heavy burden of proof; the unconstitutionality must be proven beyond all reasonable doubt." The court goes on to state that "beyond offering the New York lower court decision as authority for the unconstitutionality of the Graves Amendment, the plaintiff has offered no additional case law or argument and accordingly, the plaintiff has not sustained its burden of proving that the statute is unconstitutional."

Garcia v. Vanguard Car Rental USA, Inc. **– U.S. District Court, Middle District of Florida, Ocala Division**
POSITIVE DECISION – POSITIVE RULING ON APPEAL

March 5, 2007, the United States District Court, Middle District of Florida, Ocala Division ruled that Florida Statute 324.021(9)(b)(2), setting caps on vicarious liability of short-term lessors, is not a "financial responsibility law" protected 49 USC 30106(b). The court explained that "the Florida Statute in question does not create insurance standards for entities that register and operate motor vehicles within Florida." The court went on to state that its "analysis drives the conclusion that vicarious liability of motor vehicle lessors under Florida's dangerous instrumentality doctrine is now preempted by federal law. Consequently, Fla. Stat. 324.021(9)(b)(2) also is preempted."

The federal court also finds that "there can be no dispute that leased vehicles routinely travel between states" and that "the Graves Amendment is constitutional under the first category of Congress' Commerce Clause powers." The Court "also finds that the Graves Amendment is constitutional under the second category of Congress' Commerce Clause powers because the statute regulates the leasing and operating of motor vehicles which are the quintessential instrumentalities of modern interstate commerce." The Court further finds that "the Graves Amendment…is constitutional under the third category – regulating intrastate activities that substantially affect interstate commerce."

On August 19, 2008 the United States Court of Appeals for the 11th Circuit affirmed the U.S. District Court decision.

Jones v. Bill, et al **– Supreme Court of the State of New York Appellate Division: Second Judicial Department**
POSITIVE DECISION

On November 28, 2006, the Second Judicial Department of the Supreme Court of New York Appellate Division upheld an earlier decision of the Supreme Court, Dutchess County to dismiss a complaint against the vehicle lessor DCFS Trust based on 49 USC 30106, commonly known as the "Graves Amendment." In its decision to uphold the trial court decision, the court explained that the "Graves Amendment abolished vicarious liability of long-term automobile lessors based solely on ownership." Furthermore, the court noted that the "Graves Amendment is applicable to any action commenced on or after the date of enactment," August 10, 2005. Though

the initial suit against defendant and vehicle operator Jessica Bill was filed on August 8, 2005, DCFS Trust was not added as a defendant until an amended filing on November 1, 2005. The court rejected as "without merit" the plaintiff's assertion that its claim against DCFS is maintainable under the relation-back doctrine.

The Second Judicial Department of the Supreme Court of New York Appellate Division is the same court where the appeal of the *Graham v. Dunkley and NILT, Inc.* decision declaring 49 USC 30106 as unconstitutional is currently pending.

Poole v. Enterprise Leasing Company of Orlando **– 18th District Circuit Court – Brevard County, Florida**
NEGATIVE DECISION – POSITIVE RULING ON MOTION FOR SUMMARY JUDGMENT

On January 19, 2006, Judge T. Mitchell Barlow denied Enterprise's motion to dismiss this case and ruled that Florida's statute setting caps on the vicarious liability of short-term lessors (Florida Statute 324.021 (9)(b)(2)) is a financial responsibility law and falls under the provision of the federal law preserving a state's right to impose financial responsibility laws required for registering and operating a motor vehicle (49 USC 30106(b)). During the hearing, there was some discussion of the constitutionality of the federal law with regard to its effective date and the plaintiff's right to due process of law. The judge did not rule on this question and asked counsel on both sides to refrain from extensive debate on this issue as he felt he could make a ruling based only on the question of financial responsibility laws. This suit was filed on August 10, 2005, the day federal vicarious liability preemption was enacted. The plaintiff's case was argued by Andre Mura, Senior Litigation Counsel for the Association of Trial Lawyers of America's Center for Constitutional Litigation.

Davis v. Ilama et al (We Rent Minivans) **– Superior Court – Waterbury, Connecticut**
POSITIVE DECISION

On March 14, 2006, the Superior Court of Connecticut granted We Rent Minivans' motion to strike two counts against it that were based on liability solely due to ownership of the vehicle. In one count, the plaintiff claimed We Rent Minivans was liable by virtue of giving the defendant permission to operate one of its vehicles, with no allegation of negligence against We Rent Minivans. The second count claimed liability pursuant to Connecticut's vicarious liability statute. The court bases its decision to grant the defendant's motions to strike the two counts on the federal preemption statute (49 U.S.C. Section 30106) and on the decisions in *Infante v. U-Haul of Florida* and *Piche v. Nugent et al (Enterprise Rent-A-Car).*

***Infante v. U-Haul of Florida* – Supreme Court - Queens County, New York**
POSITIVE DECISION

On January 18, 2006, Judge Augustus Agate granted U-Haul's motion to dismiss this case ruling U-Haul of Florida was not the titled owner of the vehicle involved in the claim. However, the judge went further in his decision to clarify that regardless of the issue of the defendant not owning the vehicle, the plaintiff's claim was invalid based upon the enactment of the "Graves Amendment" prohibiting vicarious liability against owners of rented and leased vehicles and its preemption of state laws, including New York's, that previously permitted it. According to U-Haul, this case is not expected to be appealed.

***Piche v. Nugent et al (Enterprise Rent-A-Car)* – U.S. District Court – District of Maine**
POSITIVE DECISION

On September 30, 2005, Judge Margaret J. Kravchuk affirmed the effectiveness of federal law (49 U.S.C. Section 30106) preempting state vicarious liability statutes, even though this case was filed prior to enactment of the federal law and was not affected by it. The judge denied Enterprise's motion for summary judgment centering on whether the law of Maine, which includes statutory vicarious liability, or the law of New Hampshire which does not, would be applicable to this case. In her decision, the judge stated that the question at hand "is not a question likely to repeat itself in the future. On August 10, 2005 President Bush signed into law…SAFETEA-LU". She further explains that the "law 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…Thus, the long term policy debate has been resolved by the federal government."

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Memorandum

To: Truck Renting and Leasing Association (TRALA)

From: Mark A. Perry

Date: September 24, 2010

Re: Historical and Legal Analysis of the Graves Amendment

Client: T 26297-00082

In 2005, Congress enacted the Graves Amendment as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1144 (2005). The Amendment provides, in relevant part, that "[a]n owner of a motor vehicle that rents or leases the vehicle to a person . . . shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle . . . 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," provided that "there is no negligence or criminal wrongdoing on the part of the owner." 49 U.S.C. § 30106(a), (a)(2).

The Amendment is but one of the most recent in a long line of statutes—dating back to the dawn of the Republic—in which Congress has regulated the instrumentalities of interstate commerce by creating a uniform federal standard. In each instance, Congress determined that a nationwide rule would benefit interstate commerce by lifting local restrictions and providing participants in the industry (such as rental car or truck companies) with certainty about the governing law. Also, in many cases, Congress determined that it was in the nation's best interest to reduce or eliminate certain forms of liability, where liability would be unfair or place unnecessary burdens on interstate commerce.

The Graves Amendment serves both of these salutary purposes. First, it establishes a federal rule of liability, which allows owners of motor vehicles to run their businesses and use the nation's roads free from the costs of identifying and complying with a patchwork of state-by-state regulation. Second, it eradicated a particularly unfair and onerous form of liability— vicarious liability for acts of negligent drivers that the motor vehicle owner could not have anticipated and were beyond its control.

Congress did not make this policy decision lightly; rather, members of both houses explained that the statute struck the correct balance between federal and state regulation, and appropriately limited liability to cases where the motor vehicle owner was

actually at fault. In short, Congress considered these issues the first time and got it right; it need not revisit the issue now.

DISCUSSION

I. Throughout Our Nation's History, Congress Has Regulated Modes Of Transportation—Including By Displacing State Rules Of Conduct And Liability.

Under Article I, Section 8, of the U.S. Constitution, Congress has the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes." The same section provides Congress with the authority to "make all Laws which shall be necessary and proper for carrying into Execution" its power over interstate commerce. Finally, the Supremacy Clause provides that "the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const. art. VI.

From the time of the Founding, Congress's commerce power has been understood to include the authority "to *regulate and protect* the instrumentalities of interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558 (1995) (emphasis added). That power, coupled with the power to displace state laws pursuant to the Supremacy Clause, necessarily extends to the removal of state burdens on modes of transportation. As shown below, Congress has often exercised these powers to facilitate interstate commerce by imposing a uniform federal rule.

Ships and Waterways. In the Eighteenth Century, when the Constitution was drafted and ratified, the navigable waters were the principal channels of interstate commerce. The First Congress, therefore, enacted several measures that promoted interstate commerce by removing obstacles to the flow of water transportation.[1] In a famous early example, *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824), the Supreme Court upheld the federal government's power to license steamboats to navigate on the Hudson River—even though New York had enacted a local prohibition against such navigation.

Congress continued to exercise power over the waterways throughout our history. Notably, in 1851, Congress enacted a statute similar to the Graves Amendment that limited the liability of ship owners for losses that were not the owner's fault. Act of Mar. 3, 1851, ch. 43, 9 Stat. 635 (1851). In two cases upholding this law from constitutional challenge, the Supreme Court remarked that it was appropriate for the federal government to limit liability in this way: "Navigation on the high seas," the Court stated,

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[1] *See, e.g.*, Act of Sept. 1, 1789, ch. 11, 1 Stat. 55 (1789) (providing for registration or enrollment of ships belonging to U.S. citizens); Act of July 20, 1790, ch. 29, 1 Stat. 131, 131-35 (1790) (guaranteeing merchant seamen prompt payment of wages, and adequate medicine and food); Act of Mar. 2, 1819, ch. 46, 3 Stat. 488 (1819) (limiting number of passengers that could be carried on ships).

"is necessarily national in its character." *Lord v. Steamship Co.*, 102 U.S. 541, 544 (1881). The Court further noted that, if the law were administered fairly, "with the view of giving to ship owners the full benefit of the immunities intended to be secured by it, the encouragement it will afford to commercial operations . . . will be of the [highest] importance." *Providence & N.Y. Steamship Co. v. Hill Mfg. Co.*, 109 U.S. 578, 589 (1883). The Graves Amendment today plays a similar beneficial role—it encourages interstate commerce by eliminating a particularly onerous form of state liability.

Trains and Railways. In the Nineteenth Century, railroads gradually replaced waterways as the principal channels of interstate commerce. Federal regulation of the railways soon followed.[2] As was true in the shipping industry, the railroad statutes "were passed under the power vested in Congress to regulate commerce among the several States, and were designed to remove trammels upon transportation between different States, which had previously existed, and to prevent the creation of such trammels in [the] future." *R.R. Co. v. Richmond*, 86 U.S. 584, 589 (1873).[3]

Airplanes. In the Twentieth Century, Congress began to regulate still newer means of transportation, including airplanes. Indeed, because of the unique nature of air travel, federal regulation is necessarily pervasive and leaves even less room for state legislatures to experiment and regulate. *See Nw. Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944) (Jackson, J., concurring) ("Air as an element in which to navigate is even more inevitably federalized by the commerce clause than is navigable water"). Accordingly, "Congress has recognized the national responsibility for regulating air commerce," and "[f]ederal control is intensive and exclusive." *Id.* For example, in the General Aviation Revitalization Act of 1994, 49 U.S.C. § 40101, Congress limited the exposure of aircraft manufacturers to state tort liability. So too with the Graves Amendment.

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[2] *See* Act of June 15, 1866, ch. 124, 14 Stat. 66 (1866) (authorizing all steam-based railroad companies to carry passengers interstate); Act of July 25, 1866, ch. 246, 14 Stat. 244 (1866) (permitting construction of bridges over the Mississippi River).

[3] Indeed, in the Nineteenth Century, the Supreme Court often held that, even in the absence of federal legislation, the commerce power *of its own force* displaced state laws that burdened the instrumentalities of commerce—such as ships or railroads. For example, the Supreme Court struck down state fees on ship captains for passengers brought into a state, invalidated state laws giving port officials the exclusive right to inspect incoming ships, and declared unconstitutional state laws forbidding the regulation of railroad rates. *See* David P. Currie, The Constitution in the Supreme Court: The First Hundred Years 227-28, 405, 409, 412 (1985). Likewise, in *Wabash, St. Louis & Pac. Railway Co. v. Illinois*, 118 U.S. 557 (1886), the Court held that the commerce power prohibited states from enacting a law that regulated the rates for railroad journeys within a state's borders. The reason for these decisions was the hindrance that state laws imposed on the instrumentalities of commerce.

Cars and Roadways. Motor vehicles, of course, are the primary modern means of travel. From the very start of the automobile industry, Congress has federalized the regulation of the ownership and operation of motor vehicles. Throughout the industry's history, it has been well-established that state regulation of motor vehicles "is . . . subordinate to the will of Congress" under the Supremacy Clause, and can only stand "[i]n the absence of national legislation covering the subject." *Hendrick v. Maryland*, 235 U.S. 610, 622-23 (1915).

For example, in *Buck v. Kuykendall*, 267 U.S. 307 (1925), and *George W. Bush & Sons Co. v. Maloy*, 267 U.S. 317 (1925), the Court invalidated state laws that required operators of common carriers conducting business in interstate commerce to obtain a special license to operate within the state. The Court held, among other things, that the legislation conflicted with the Federal Highway Act, through which Congress had intended "that state highways shall be open to interstate commerce." *Bush*, 267 U.S. at 324.

Later, the Motor Carrier Act of 1935 inaugurated comprehensive congressional regulation of safety standards for motor vehicles. It required motor carriers to maintain continuous and adequate service and keep sufficient records; established maximum hours-of-service requirements; and regulated rates. *See* Clyde B. Aitchison, *The Evolution of the Interstate Commerce Act: 1887-1937*, 5 Geo. Wash. L. Rev. 289, 394-99 (1937). Federal motor vehicle regulation has become even more pervasive since then. In 1966, Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966 and the Highway Safety Act of 1966, Pub. L. No. 89-563, 80 Stat. 718 (1966); Pub. L. No. 89-564, 80 Stat. 731 (1966), which created the predecessor entities to the National Highway Traffic Safety Administration. Those enactments established, among other things, extensive federal regulation of safety standards for motor vehicles and highways; today, their successor statutes permit the federal government to dictate such criteria as, for example, the length and width limits for vehicles. *See*, *e.g.*, 49 U.S.C. § 31111.

As was true for ships, trains, and planes, Congress exercised its authority over the nation's highways to displace inconsistent state standards. In 1987, for example, Congress enacted a law excluding certain evidence from admission in state trials that state governments were required to collect to comply with federal laws designed to identity and evaluate hazardous conditions on federally funded roads. Although the federal law supplanted state rules of evidence, the Supreme Court upheld it from constitutional challenge, finding it reasonable for Congress to believe that exclusion of such evidence "would result in more diligent efforts to collect the relevant information, more candid discussions of hazardous locations, better informed decisionmaking, and, ultimately, greater safety on our Nation's roads." *Pierce County v. Guillen*, 537 U.S. 129, 147 (2003).

The Graves Amendment, of course, is yet another recent example of Congress adopting a federal standard to govern participants in the transportation industry—owners of motor vehicles—and displace burdensome state laws. As it did with earlier statutes,

Congress carefully weighed the benefits and drawbacks of federal legislation in this area, and determined that eliminating vicarious liability, while preserving liability for fault, was in the nation's best interests. It was by no means an unusual exercise of Congressional power. To the contrary, it was a paradigmatic example of Congress's authority to facilitate interstate commerce by adopting a fair, nationwide rule.

II. The Courts Have Rejected Challenges To The Graves Amendment.

The appellate courts have consistently rejected constitutional challenges to the Graves Amendment, recognizing that the Amendment falls squarely within Congress's power under the Commerce Clause. The leading case is *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242 (11th Cir. 2008).

Garcia was a Florida wrongful death suit, brought on behalf of car accident victims against Vanguard, which leased the vehicle to the driver who caused the accident. *See id.* at 1245. Vanguard, which admittedly was not at fault for the accident, successfully argued that the Graves Amendment precluded holding Vanguard vicariously liable for the alleged negligence of the driver. *See id.* Plaintiffs in turn argued that the Amendment could not be enforced, because it supposedly exceeded Congress's power under the Commerce Clause. *See id.* at 1249.

The Eleventh Circuit rejected plaintiffs' challenge and upheld the Amendment's constitutionality, because the statute has a substantial effect on interstate commerce. *See id.* at 1253. The Court concluded that Congress acted reasonably in enacting the Graves Amendment to reduce burdens on interstate commerce:

> Congress rationally could have perceived strict vicarious liability for the acts of lessees as a burden on [the rental car] market. . . . The reason it could have done so is that the costs of strict vicarious liability against rental car companies are borne by someone, most likely the customers, owners, and creditors of rental car companies. If any costs are passed on to customers, rental cars . . . become more expensive, and interstate commerce is thereby inhibited. Moreover, if significant costs from vicarious liability are passed on to the owners of rental car firms, it is possible that such liability contributes to driving less-competitive firms out of the marketplace, or inhibits their entry into it, potentially reducing options for consumers.

Id. at 1253.

These observations echoed the statute's legislative history, which noted Congress's concern with litigation costs driving rental car companies out of the market or forcing them to pass costs on to their consumers. *See id.* at 1253 n.6. As explained above, the statute was also consistent with Congress's longstanding role in regulating modes of transportation and eliminating burdens on interstate commerce. For these

reasons, many federal and state courts have agreed with *Garcia*, and upheld the Graves Amendment from constitutional attack.[4]

III. Congress Adopted The Graves Amendment After Due Deliberation, And Had Sound Policy Reasons For Doing So.

As an appropriate use of Congress's power, the Graves Amendment is a carefully calibrated policy decision whose purpose was to limit the liability of motor vehicle owners to those cases where the owner is actually at fault. As noted in *Garcia*, the legislative history of the Amendment confirms that Congress made a conscious decision to create a federal rule of liability that would lower litigation costs for vehicle rental companies and to differentiate between meritorious and frivolous lawsuits.

Several members of Congress explained that the purpose of the Graves Amendment was to "establish a fair national standard for liability." 151 Cong Rec. H1034-01 (daily ed. Mar. 9, 2005) (statement of Rep. Blunt), 2005 WL 556038 (Cong. Rec. 2005), at *H1200; *see also id.* at *H1202 (statement of Rep. Smith) (purpose of Graves Amendment is to create a "national standard"). Moreover, members of Congress from both houses, including the bill's sponsor, explained that they were adopting a rule that was fair both to motor vehicle owners and accident victims: It would eliminate liability for actions where the motor vehicle operator was not actually at fault, but leave state actions for negligence (*e.g.*, negligent maintenance) intact. *See id.* at *H1200 (statement of Rep. Graves) ("I want to emphasize, I want to be very clear about this, that this provision will not allow car and truck renting and leasing companies to escape liability if they are at fault"); *id.* at *H1202 (statement of Rep. Smith) ("The Graves[] amendment . . . provid[es] that vehicle rental companies can only be held liable in situations where they have actually been negligent. This amendment in no way lets companies off the hook when they have been negligent"); 151 Cong Rec. S5433-03 (daily ed. May 18, 2005) (statement of Sen. Santorum), 2005 WL 1173802, at *S5434 ("This provision is a common sense reform that holds vehicle operators accountable for their own actions and does not unfairly punish owners who have done nothing wrong").

Congress was also aware that vicarious liability could have a deleterious effect on the transportation industry and the American economy as a whole. Therefore, it acted accordingly to remove this burden on interstate commerce. As one Senator noted, "[t]hough only a few States enforce laws that threaten nonnegligent companies with unlimited vicarious liability, they affect consumers and businesses from all 50 States." 151 Cong Rec. S5433-03 (statement of Sen. Santorum), 2005 WL 1173802, at *S5433. "Vicarious liability means higher consumer costs in acquiring vehicles and buying insurance and means higher commercial costs for the transportation of goods. Left

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[4] *See also Dupuis v. Vanguard Car Rental USA, Inc.*, 510 F. Supp. 2d 980 (M.D. Fla. 2007); *Jasman v. DTG Operations, Inc.*, 533 F. Supp. 2d 753 (W.D. Mich. 2008); *Flagler v. Budget Rent A Car Sys., Inc.*, 538 F. Supp. 2d 557 (E.D.N.Y. 2008); *Seymour v. Penske Truck Leasing Co.*, No. 407CV015, 2007 WL 2212609 (S. D. Ga. July 30, 2007); *Graham v. Dunkley*, 852 N.Y.S.2d 169 (App. Div. 2008).

unreformed, these laws could have a devastating effect on an increasing number of small businesses that have done nothing wrong." *Id.* As explained above, this reasoning is consistent with Congress's historical and vital role in regulating the modes of transportation and removing state impediments to the flow of interstate commerce.

Finally, Congress plainly did not anticipate that states would have *no* role to play in holding motor vehicle owners accountable for harm caused by their vehicles. To the contrary, as noted above, states could still impose liability when the vehicle owner acted negligently. Moreover, the Graves Amendment expressly saves from preemption any state law that, for example, "impos[es] financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating" the vehicle. 49 U.S.C. § 30106(b)(1). "Under this provision, States would continue to determine the level of compensation available for accident victims by setting minimum insurance coverage requirements for every vehicle." 151 Cong Rec. S5433-03 (statement of Sen. Santorum), 2005 WL 1173802, at *S5433. Thus, the Graves Amendment envisions a critical role for the states to play in setting minimum insurance requirements for motor vehicle owners to ensure that accident victims are properly compensated.

CONCLUSION

In enacting the Graves Amendment, Congress acted pursuant to its historical authority to regulate interstate commerce, particularly the instrumentalities of commerce, and displace state laws in favor of federal rules that are both uniform and fair. The courts have recognized the legitimacy of the enactment. As the Amendment's legislative history reveals, Congress acted with due deliberation and struck the appropriate balance: The law helps to protect businesses from unnecessary litigation and consumers from added costs, limits liability to cases where a motor vehicle owner is at fault, and allows states to continue to set insurance requirements to ensure accident victims are fairly compensated for their injuries.

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