



THE NOT SO “GRAVE” RESULTS OF THE GRAVES AMENDMENT FOR RENTAL CAR COMPANIES

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Just prior to publication, the Florida Supreme Court issued an opinion affirming the Fourth District’s ruling in Vargas v. Enterprise Leasing Co., 36 Fla. L. Weekly S187a (Fla. 2011). The law in Florida is now settled: The Graves Amendment, 49 U.S.C § 30106, preempts Florida Statute § 324.021(9)(b)2 (2007), thereby insulating rental car companies from vicarious liability while engaged in the trade or business of renting or leasing motor vehicles. In affirming, the Florida Supreme Court also upheld that Florida Statute § 324.021(9)(b)2 is not a financial responsibility law and that the Graves Amendment violate the Commerce Clause of the United States Constitution.

The Graves Amendment appears clear on its face, but due to its financial impact, the law has been repeatedly challenged on various grounds since its enactment on August 10, 2005. The Graves Amendment is part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”).¹ This federal law was designed to abolish the states’ ability to impose vicarious liability on businesses engaged in renting or leasing motor vehicles. Thus, under the Graves

Amendment, rental vehicle owners, as lessors, are insulated from liability that occurs while the vehicle is being used during the lease period, provided the lessor is not guilty of criminal wrongdoing or negligence.²

The challenges to the Graves Amendment in Florida have arisen precisely because the application of the federal law changed the landscape of Florida’s Dangerous Instrumentality Doctrine and the application

of the vicarious liability laws.³ Whether the Graves Amendment will continue to shield businesses leasing cars in Florida may soon be decided by the Florida Supreme Court.⁴ As of the preparation of this article, the Court had not yet rendered an opinion on the certified question that has been fully briefed and argued before it: Whether the Graves Amendment, 49 U.S.C. § 30106, preempts § 324.021(9)(b)(2), Florida Statutes (2007)?



STATE VERSUS FEDERAL LAWS

Florida's Dangerous Instrumentality Doctrine ("Doctrine"), codified as § 324.021(9)(b)(1), Fla. Stat., stems from the concept of vicarious liability and assumes that a motor vehicle is a "dangerous instrumentality."⁵ The Doctrine imposes strict liability on the owner or lessor of a motor vehicle who voluntarily entrusts the vehicle to an individual whose negligent operation of it causes injury.⁶ An owner who gives authority to another to operate the owner's vehicle, by either express or implied consent, has a nondelegable obligation to ensure that the vehicle is operated safely.⁷

The Doctrine, as applied to motor vehicles, is unique to Florida and has been applied with very few exceptions.⁸ The Florida Supreme Court, in 2000, noted that "if Florida's traffic problems were sufficient to prompt its adoption in 1920, there is all the more reason for its application to today's high-speed travel upon crowded highways."⁹ In 1999, the Florida Legislature codified § 324.021(9)(b), Fla. Stat., creating an exception to the Doctrine, thereby limiting the amount that a short-term lessor of automobiles (less than one year) is liable.¹⁰ As a result of the exception, a short term lessor is liable only up to \$100,000.00 per person and up to \$300,000.00 total for bodily injury and up to \$50,000.00 for property damage, with an additional \$500,000.00 allowed if the lessee is uninsured.¹¹ That law remained undisturbed until the federal Graves Amendment was codified in 2005.

The Graves Amendment states that a rental car company will not be held liable for the tortious actions of the driver of a car that the company owns, rents, or leases to an individual, regardless of whether the driver is an insured motorist, so long as the rental car company is not negligent or guilty of criminal wrongdoing.¹² Case law has focused on whether section (b)(2) of the Graves Amendment, which details the "financial responsibility laws" applicable to business entities engaged in the trade or business of renting or leasing motor vehicles, preempts state laws that impose

liability on owners or lessors of vehicles up to certain amounts listed in the pertinent state statutes. Although "financial responsibility" is left undefined in the Graves Amendment, nothing in this portion of the Code supersedes any law of any State regarding imposition of liability on such businesses for failure to meet the financial responsibility or liability insurance requirements under State law.¹³

In Florida, the Fourth District Court of Appeal has noted that "the common usage of financial responsibility thus means an insurance equivalent, that level of security required to pay for damages arising from motor vehicle accidents, as a condition of acquiring a driver's license or registering a vehicle. . . ."¹⁴ Furthermore, the District Courts of Appeal in Florida have all reached decisions holding that the Graves Amendment preempts § 324.021(9)(b), Fla. Stat., thereby insulating rental car leasing companies from any liability so long as they are not negligent or engaged in criminal wrongdoing during the leasing process.

THE EFFECT OF THE GRAVES AMENDMENT THROUGH FLORIDA CASE LAW

Prior to the enactment of the Graves Amendment, Florida courts applied the Doctrine with few exceptions to protect allegedly injured plaintiffs.¹⁵ Furthermore, a United States District Court for the Southern District of Florida Judge held that the Graves Amendment was unconstitutional because it exceeded Congress's powers under the Commerce Clause.¹⁶ This Court reasoned that "state laws are not to be preempted by a federal statute unless it is the clear and manifest purpose of Congress to do so."¹⁷ However, on appeal to the Eleventh Circuit, the judgment entered against the rental car lessor was vacated and remanded with instructions to enter judgment in favor of the car rental lessor consistent with the decision reached in *Garcia v. Vanguard Car Rental USA, Inc.*¹⁸

The *Garcia* decision has influenced the Florida District Courts of Appeal to consistently hold that the Graves Amendment preempts the Doctrine.¹⁹ When *Garcia* was before the Fourth

District, the District Court held that section 324.021(9)(b)(2), Fla. Stat., was not a financial responsibility law because it did not impose liability on car rental companies for failing to meet financial responsibility or liability insurance requirements under state law.²⁰ Administrators and personal representatives of estates of two people killed in a three-car accident involving a rental car brought a wrongful death claim against Vanguard Car Rental USA, which filed a declaratory action and motion for summary judgment.²¹ Further, the *Garcia* Court held that the Graves Amendment was a valid exercise of Congress's Commerce Clause power,²² thereby negating any constitutional arguments made by plaintiffs. In *Garcia v. Vanguard Car Rental USA, Inc.*, the Eleventh Circuit affirmed that decision.²³

In *Vargas v. Enterprise Leasing Co.*, the Fourth District Court of Appeal held that the federal Graves Amendment preempted the state "financial responsibility" statute.²⁴ Thus, in *Vargas*, the state law requiring rental car companies to be financially responsible for up to an additional \$500,000.00 if one of their cars is driven by an uninsured or underinsured motorist having less than \$500,000.00 in combined insurance limits, was preempted by the federal Graves Amendment.²⁵ The sole count against Enterprise Leasing asserted that it was vicariously liable under the Doctrine.²⁶ The Circuit Court granted Enterprise Leasing's motion for summary judgment, holding that the Graves Amendment preempted this section of the Florida Statutes.²⁷ In affirming, the Fourth District Court of Appeal concluded that the state statute was neither a "financial responsibility law" nor a "liability insurance requirement,"²⁸ which would bring it within a savings clause of the Graves Amendment.²⁹

CONCLUSION

The Graves Amendment has thus far achieved its purpose of protecting rental car companies from vicarious liability in Florida. The majority of Florida's intermediate appellate courts have reached the conclusion that the Graves Amendment preempts the Doctrine.³⁰ The Fourth District followed the *Garcia* Court's

rationale but cited that the facts were virtually identical to *Vargas*.³¹ The Fourth District certified the question regarding whether the Graves Amendment preempts section 324.021(9)(b)(2), Fla. Stat., to the Florida Supreme Court, as did the Second³² and Fifth³³ Districts. As of publication of this article, the Florida Supreme Court has not yet rendered an opinion.³⁴

The results of the Graves Amendment are not so “grave” for lessors of rental cars in the current legal environment. Currently, lessors are protected in Florida but await the Florida Supreme Court’s decision on this matter. Of course, if the Florida Supreme Court rules against preemption, defendants may request the matter be heard by the Eleventh Circuit, which has clearly ruled that the Graves Amendment preempts Florida state law.³⁵ But should the Florida Supreme Court affirm the District Courts of Appeal in determining that the Graves Amendment preempts the Doctrine, it will shore up existing precedent and force plaintiffs to seek alternatives such as filing direct negligence claims against rental car companies for lack of maintenance, repair, and other defective conditions. We will also likely see a rise in negligent entrustment claims against rental car companies. How “grave” the Graves Amendment will be remains to be seen.

(Endnotes)

- 1 *Garcia v. Vanguard Car Rental USA, Inc.*, 10 F. Supp. 2d 821 (M.D. Fla. 2007).
- 2 *Kamarsingh v. PV Holding Corp.*, 983 So.

- 3 2d 599 (Fla. 3d DCA 2008).
See Susco Car Rental Sys. of Fla. v. Leonard, 112 So. 2d 832 (Fla. 1959); *Lynch v. Walker*, 159 Fla. 188, 31 So. 2d 268, 271 (Fla. 1947) *overruled in part on other grounds by Meister v. Fisher*, 462 So. 2d 1071 (Fla. 1984); *Poole v. Enterprise Leasing Co. of Orlando*, 2006 WL 1388442 (2006).
- 4 *See Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614 (Fla. 4th DCA 2008); *Tocha v. Richardson*, 995 So. 2d 1100 (Fla. 4th DCA 2008); *West v. Enterprise Leasing Co.*, 997 So. 2d 1197 (Fla. 2d DCA 2008); *Karling v. Budget Rent A Car Sys., Inc.*, 2 So. 3d 356 (Fla. 5th DCA 2009).
- 5 *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 445 (Fla. 1920).
- 6 *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000).
- 7 *Id. citing Hertz Corp. v. Jackson*, 617 So. 2d 1051, 1053 (Fla. 1993).
- 8 *Id. citing Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990).
- 9 *Id.*
- 10 § 324.021(9)(b)(2), Fla. Stat. (2007).
- 11 *Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614, 617 (Fla. 4th DCA 2008).
- 12 49 U.S.C. § 30106(a) (2005).
- 13 49 U.S.C. § 30106(b)(2) (2005).
- 14 *Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614, 619 (Fla. 4th DCA 2008).
- 15 *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000) *citing Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990).
- 16 *Vanguard Car Rental USA, Inc. v. Druin*, 521 F. Supp. 2d 1343, 1347 (S.D. Fla. 2007).
- 17 *Id.*

- 18 *Vanguard Car Rental USA, Inc. v. Druin*, 2009 WL 995141 (2009) *citing Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242 (11th Cir. 2008).
- 19 *Garcia v. Vanguard Car Rental USA, Inc.*, 510 F. Supp. 2d 821, 825 (M.D. Fla. 2007).
- 20 *Id.*
- 21 *Id.* at 824.
- 22 *Id.* at 834.
- 23 *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242 (11th Cir. 2008).
- 24 *Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614 (Fla. 4th DCA 2008).
- 25 *Id.* at 619.
- 26 *Id.*
- 27 *Id.*
- 28 *Id.*
- 29 *Id.* at 618.
- 30 *See St. Orange v. White*, 988 So. 2d 59 (Fla. 1st DCA 2008); *Blanks v. Enterprise Leasing Co. et al.*, (Fla. 3d DCA 2009); *Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614 (Fla. 4th DCA 2008); *Karling v. Budget Rent A Car Sys.*, 2 So. 3d 354 (Fla. 5th DCA 2008); *Garcia v. Vanguard Car Rental USA, Inc.*, 510 F. Supp. 2d 821, 825 (M.D. Fla. 2007).
- 31 *Tocha v. Richardson and Dollar Thrifty Auto. Group, Inc.*, 995 So. 2d 1100, 1102 (Fla. 4th DCA 2008).
- 32 *West v. Enterprise Leasing Co.*, 997 So. 2d 1197 (Fla. 2d DCA 2008).
- 33 *Karling v. Budget Rent A Car Sys., Inc.*, 2 So. 3d 356 (Fla. 5th DCA 2009).
- 34 *Vargas v. Enterprise Leasing Co.*, 28 So. 3d 46 (Fla. 2009).
- 35 *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242 (11th Cir. 2008).