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Vicarious Liability of Rental Car Companies: The Effect of the Graves Amendment and the Ruling in *Garcia v. Vanguard Car Rental USA, Inc.*, 510 F.Supp.2d 821 (M.D. Fla. 2007) by James Waczewski, Esq. & Marcella Garcia, Esq.



James Waczewski

Prior to the passage of the “Graves Amendment”, rental vehicle companies faced strict vicarious liability, in Florida and a few other states, for the negligence of the renter. Thus, regardless of whether a rental vehicle company had any fault in the accident, it still faced significant liability when one of its vehicles was involved in an accident. The Graves Amendment was supposed to change this scheme by limiting vicarious liability to situations when the rental company was at least partially at fault. However, until March of 2007, most Florida Circuit Courts had ruled that the Graves Amendment did not preempt Florida’s vicarious liability scheme (as limited, to up to \$600,000, by Section 324.021(9)(b), Florida Statutes) against rental-vehicle companies. This trend was reversed in March of 2007, when Judge Hodges, of the Middle District of Florida, issued his thorough opinion in *Garcia v. Vanguard*, 510 F.Supp.2d 821 (M.D. Fla. 2007). Since then, most Florida Courts and Federal Courts addressing this issue have agreed with Judge Hodges’ reasoning and have also held that the Graves Amendment preempts Florida’s strict vicarious liability scheme against rental vehicle companies and that the Graves Amendment is constitutional.

The Graves Amendment (49 U.S.C. § 30106) is a part of the Transportation Equity Act, signed into law as of August 10, 2005. The Graves Amendment expressly eliminated vicarious liability against the lessor of a motor vehicle. 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).

Congress included two limitations on the preemptive scope of the Graves Amendment in subsection (b) of 49 U.S.C. § 30106, which are as follows:

- (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 liability insurance requirements under State law. Id. (emphasis added).

49 U.S.C. § 30106 (2007).

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Workers' Compensation

The Third District Court Opines that Workers' Compensation Lien Recovery is Capped at the Claimant's Net Recovery by *Brian C. Karsen, Esq.*

Luscomb v. Liberty Mutual and BJ's Wholesale Club, Inc., 32 Fla. L. Weekly D2468 (Fla. 3rd DCA).

Robert Luscomb was working for Raven Transport Company when he was involved in a work-related accident on September 8, 1999 while delivering goods to BJ's Wholesale Club in Miami. Mr. Luscomb suffered severe injuries to his right foot and ankle, which ultimately resulted in his right foot being amputated. Liberty Mutual, Raven Transport Company's insurance carrier, paid workers' compensation medical and indemnity benefits as provided by law.

Mr. Luscomb filed tort claims in 2003 against BJ's Wholesale Club, Inc. pursuant to the accident and his damages. Liberty Mutual filed a notice of lien for workers' compensation benefits provided to Mr. Luscomb, which ultimately exceeded \$1 million. Mr. Luscomb settled his claims against BJ's Wholesale for \$215,000, netting \$81,748 after attorney's fees and costs.

Liberty Mutual sought to include a portion of Mr. Luscomb's attorney's fees and costs in the computation of the lien and recover a portion of these to satisfy the lien. The trial court imposed a lien of \$132,410, but limited Mr. Luscomb's obligation to his net proceeds, \$81,748. Mr. Luscomb argued the \$215,000 settlement figure was not the "full value of damages sustained" and that the court was required to make a determination of the full value of the tort claim against BJ's

Wholesale. Mr. Luscomb's experts placed the full value of this claim between \$5 million and \$6 million, taking into account life expectancy, medical expenses and lost earning capacity. This higher figure, were it to be used as the denominator in calculating Liberty Mutual's lien, would reduce the lien amount.



Brian Karsen

The primary issue for determination was whether a workers' compensation lien recovery can exceed the claimant's net recovery and whether such a lien must be reduced to a percentage of benefits paid by the workers' compensation carrier where the claimant did not recover the "full value of damages sustained".

The 3rd DCA held that it is well-established that the workers' compensation lien recovery is capped at the claimant's net recovery and, therefore, denied Liberty Mutual's request to recover a lien in excess of the net settlement funds. The 3rd DCA further found that Mr. Luscomb demonstrated the \$215,000 settlement amount was not the full value of his damages (particularly since Liberty Mutual had paid out in excess of \$1 million). Accordingly, it remanded the case to the trial court to determine the "full value of damages sustained" based on the evidence presented and divide Mr. Luscomb's net recovery by that full value to compute Liberty Mutual's lien.

Defense Verdicts

Jasso v. Angel and Ramos (Dade County).

Daniel J. Santaniello, Managing Partner and Julie M. Congress, Associate received good results (October 24, 2007) in a case involving a significant impact rear-end collision wherein Defendant, Juan Ramos claimed a fabre third-party caused the accident. Plaintiff requested a verdict in excess of **\$50K**. The jury found Defendant Ramos only 10% liable, Co-Defendant 50% liable, and Non-Party phantom vehicle 40% liable. The jury awarded Plaintiff only \$6,600.00 which after the set-off of \$10,000.00 resulted in a final judgment in favor of Defendants.

Double Death Products Liability Case

Lake v. Tenneco (Hillsborough County). Anthony J. Petrillo, Managing Partner and Matthew L. Evans, Associate were granted a Motion for Summary Judgment December 17, 2007 in a double death Products Liability case when the judge found in her order that "the dangers associated with carbon monoxide poisoning are well known and Tennaco had no duty to re-warn." The case set in the U.S. District Court, Middle District of Florida involved two teenagers who were killed by carbon monoxide poisoning, after spending the night in their mini-van.

Liability

Vicarious Liability of Rental Car Companies continued

by James P. Waczewski, Tallahassee Managing Attorney and Marcella L. Garcia, Esq.

The language of the Graves Amendment is unambiguous and clear in that it preempts a State's strict vicarious liability scheme against lessors, i.e. Florida's Dangerous Instrumentality Doctrine. The Graves Amendment eliminates strict vicarious liability of lessors, but allows vicarious liability when there is fault by the lessor that contributed to the accident.

Garcia v. Vanguard was the first case in Florida at the federal level to address preemption of Florida's Dangerous Instrumentality Doctrine. The case was initially filed as a declaratory action by Daniel Santaniello, Managing Partner, Paul Jones, Orlando Managing Partner, and James Waczewski, Tallahassee Managing Attorney, of Luks, Santaniello, Perez, Petrillo & Gold. The case culminated in the opinion reported at *Garcia v. Vanguard Car Rental USA, Inc.*, 510 F.Supp.2d 821 (M.D. Fla. 2007).

In the opinion, Judge Hodges found that "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, except when there is negligence or criminal wrongdoing on the part of the owner." *Id.* at 829. Further, the Middle District of Florida held the Graves Amendment is "a permissible exercise of Congress' Commerce Clause powers." *Id.* at 837. Other Federal Courts who share the same views as expressed in *Garcia* include: *Dupuis v. Vanguard Car Rental*, 510 F.Supp.2d 980 (M.D. Fla. 2007); *Johnson v. Agnant*, 480 F.Supp.2d 1 (D.D.C. 2006); *Merchants Insurance Group v. Mitsubishi Motor Credit Association*, 2007 WL 2815744 (E.D. N.Y. 2007); *Milsap v. U-Haul Truck Rental Co.*, 2006 WL 3797731 (D.Ariz. 2006); and, *Liberty Mutual Ins. Co. v. TCF Equipment Finance, Inc.*, 2007 WL 4557204 (M.D. Fla. 2007).

At the State level, most Florida Circuit Court judges are now relying on *Garcia* to hold that the Graves Amendment preempts strict vicarious liability claims against rental vehicle companies. Furthermore, the Third District Court of Appeals recently issued two opinions adopting the holding of *Garcia*. See *Bechina v. Enterprise Leasing Company*, 2007 WL 4322303 (Fla. 3rd DCA 2007); *Kumarsingh v. PV Holding Corp.*, 2007 WL 2847956 (Fla. 3rd DCA 2007). Unless a different Florida Court of Appeals rules otherwise, the Third District's opinions are

binding on all Florida trial courts.

It should be noted that in *Vanguard Car Rental USA, Inc. v. Drouin*, 2007 WL 2915903 (S.D. Fla. 2007), the Southern District of Florida held that Congress exceeded the authority granted to it by the Commerce Clause when it enacted the Graves Amendment; therefore, it found the Graves Amendment unconstitutional. *Id.* The same judge reached the same conclusion in *Vanguard Car Rental USA, Inc. v. Huchon*, 2007 WL 2875388 (S.D. Fla. 2007). This conflict is presently before the Eleventh Circuit Court of Appeals, which is reviewing the *Garcia* case and held oral arguments on the case in early January. The Eleventh Circuit may issue an opinion within the next few weeks, or months.

Even if the Eleventh Circuit affirms Judge Hodges' ruling in *Garcia*, not all issues regarding the preemptive scope of the Graves Amendment will be resolved. For example, *Garcia* does not address the question of whether the lessor is still liable to pay to the injured plaintiff for the \$10,000.00 minimum financial responsibility amount required by Chapter 324, Florida Statutes (assuming the lessor did not properly shift responsibility for this amount to the lessee under Florida law). Although the Third District's opinion in *Bechina* suggests that the Graves Amendment eliminated all vicarious liability against lessors – including vicarious liability for the \$10,000.00 financial responsibility amount – the question remains whether the lessor, as the owner of the vehicle, is nevertheless required to pay this amount to the injured party (assuming a \$10,000 judgment against the lessee) as a quasi-insurer on behalf of an uninsured lessee. See *Budget Rent A Car Systems, Inc. v. Taylor*, 626 So. 2d 976, 977-978 (Fla. 4th DCA 1993) (discussing role of lessor as a quasi-insurer). *Garcia* will not resolve whether the Graves Amendment preempts Florida's strict vicarious liability scheme as it applies to long term lessors (one year or more).

The landmark case of *Garcia v. Vanguard Car Rental USA, Inc.*, 510 F.Supp.2d 821 (M.D. Fla. 2007), presented by Luks, Santaniello, Perez, Petrillo & Gold, has had widespread implications and acceptance, not only in Florida, but in courts across the nation. We will update our readers on further development in this matter – as we expectantly await the Eleventh Circuit's opinion in *Garcia*.

Defense Verdicts, cont.

The Estate of the female passenger brought suit against Tenneco Inc., claiming that the Thrush Dynamax Muffler installed on the vehicle was defective and the packaging did not contain sufficient warnings about the risk of carbon monoxide poisoning due to improper installation. The muffler was a "performance part" and as with most performance parts, do not come with installation instructions. The teenage installer improperly attached a plastic exhaust pipe to the muffler and the carbon monoxide entered the vehicle through a rusted hole in the side of the door. Plaintiff demanded **\$4M** at Mediation.

Apportionment of Fault of Non-Parties in Negligence Actions

by Daniel B. Reinfeld, Esq.

The Florida legislature continues to debate the allocation of fault to non-parties in negligence actions that began with the Florida Supreme Court's 1993 decision in Fabre v. Marin. In this seminal case, the Court ruled that a defendant in a negligence action may assert the fault of a nonparty as an affirmative defense. If the defendant proves the fault of a nonparty at trial, the jury may apportion fault to the nonparty on the jury verdict form.



Daniel Reinfeld

Since the decision, there have been several legislative attempts to revise the application of the Fabre doctrine. In the 2007 Regular Session, measures were introduced that sought to limit the scope of the doctrine. Committee Substitute for Senate Bill 1558 included categories of non-parties that could be added to the verdict form. That bill, as well as the similar House Bill 733, died during the 2007 Regular Session. In response the Florida Senate issued a Senate Interim Project Report that sought to identify how other states apportion fault to nonparties, and evaluated the advantages and disadvantages of the various apportionment methods.

The Report found that the majority of states, including Florida, have abolished joint and several liability and allow the inclusion of a nonparty on a verdict form. To date, 28 states permit this allocation; 18 states and the District of Columbia do not permit the allocation of fault to nonparties; and in 4 states, the law is unclear.

Recommendations of the report were varied, including the recommendation to make no revisions to the statute governing apportionment of fault and a recommendation to establish a clear and convincing evidence standard for 'phantom drivers' in automobile suits. To date no further action has been taken in the legislature. We will continue to monitor these emerging developments.

Florida No-Fault Laws - 2008 Statutory Provisions Seminar: As you may know, Florida's old No-Fault Law including the PIP Statute is reenacted effective January 1, 2008. Please contact Client Relations (maria@ls-law.com) if you would like an update seminar on the new provisions and what remains unchanged.

The Luks, Santaniello, Perez, Petrillo & Gold

LEGAL UPDATE

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