New York Vehicle and Traffic Law § 388 : Vicarious Liability

New York's Vehicle and Traffic Law (VTL) § 388 provides that:

> Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner.

McKinney's Vehicle and Traffic Law § 388(1).

Simply stated, this statute imposes vicarious liability upon owners of motor vehicles for the negligent acts of permissive users of such. VTL § 388 abrogates the common law rule that an owner of an automobile is not responsible for the negligent acts of a driver who was using the vehicle for his or her own business or pleasure. See Murdza v. Zimmerman, 99 N.Y.2d 375 (2003).

49 USC § 30106 : Graves Amendment

On August 10, 2005, President George W. Bush signed into law the Transportation Equity Act of 2005, a comprehensive transportation bill which included the Graves Amendment, now codified at 49 U.S.C. § 30106. The section entitled, "Rented or leased motor vehicles safety and responsibility" states in pertinent part:

> An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if -
>
> > (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
> >
> > (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

49 U.S.C § 30106(a).

In short, this federal statute bars vicarious liability action against professional lessors and renters of vehicles so long as the owner is engaged in the trade or business of renting or leasing motor vehicles and there is no negligence or criminal wrongdoing on the part of the owner

With regard to the effective date of the Graves Amendment, subdivision (c) of 49 U.S.C. § 30106 reads:

> (c) Applicability and effective date. Notwithstanding any other provision of law, this

> section shall apply with respect to any action commenced on or after the date of enactment of this section [August 10, 2005] without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment. [material in brackets added]

However, cases examining 49 U.S.C. § 30106(c) have split over the issue of whether the Graves Amendment applies where an action was commenced prior to August 10, 2005, but the owner-lessor was added as a defendant after August 10, 2005. See Kuryla v. Halabi, 39 A.D.3d 485, 485-86, 835 N.Y.S.2d 230, 231(2d Dept. 2007) (finding Graves Amendment applicable); Jones v.Bill, 34 A.D.3d 741, 741-42, 825 N.Y.S.2d 508, 509-10 (2d Dept. 2006) (same); but see Williams v. White, 40 A.D.3d 110, 111-12, 832 N.Y.S.2d 713, 713-14 (4d Dept. 2007) (finding Graves amendment in applicable); Leuchner v. Cavanaugh, 42 A.D.3d 893, 837 N.Y.S.2d 887, 887 (4d Dept. 2007) (same). In all of those cases, the actions were justiciable at the time they were originally filed.

In Leuchner v. Cavanaugh, *supra*, the most recent of the above decisions of the Appellate Division, the Court dealt with a plaintiff's personal injury suit arising out of an automobile accident, where the plaintiff's original summons and complaint was filed on September 1, 2004 but the defendant alleged to be the owner/lessor of the vehicle was not brought into the suit until November 10, 2005. It was not in dispute that the claim asserted against the defendant was vicarious to the underlying claim brought by plaintiff against the defendant driver (VTL § 388) and, as such, was derivative of the underlying claim. The defendant owner/lessor argued that the federal statute barred the action against it because the complaint naming it as a party was filed after August 10, 2005. The Court disagreed and held that the claim was not barred by the federal statute barring vicarious liability of leasing companies and that the date of commencement of the underlying action was the date against which plaintiff's right to sue should be measured.

Graves Amendment: Federal Preemption of VTL § 388

Although cases have been, and presumably continue to be, brought premised on a vicarious liability theory pursuant to VTL § 388, the application of VTL § 388 to lessors-defendants has been preempted by federal law. The Graves Amendment declares that leasing companies shall not be held vicariously liable under any State law for damages sustained in a motor vehicle accident and, in effect, preempts New York State Vehicle and Traffic Law (VTL) § 388 which expressly provides that leasing companies, as owners, are vicariously liable for the negligence of a driver.

The Graves Amendment has been enforced as preempting the vicarious liability imposed on commercial lessors by Vehicle and Traffic Law § 388. See Hernandez v. Sanchez, 40 A.D.3d 446 (1d Dept. 2007) (holding action in which only basis for claim against defendant lessor was VTL § 388 was barred by Graves Amendment); Kuryla v. Halabi, 39 A.D.3d 485 (2d Dept. 2007) (holding it was error to grant motion for leave to amend complaint to add appellant as defendant; cause of action sought to be asserted against appellant was interposed after effective date of 49 USC § 30106); Jones v. Bill, 34 A.D.3d 741 (2d Dept. 2006) (holding claim against newly-added defendant interposed after effective date of 49 U.S.C. § 30106 was barred and assertion that claim against defendant was maintainable under relation-back doctrine was without merit).

Most recently, in Graham v. Dunkley, —N.Y.S.2d —, 2008 WL 269527 (2d Dept. 2008), the Appellate Division held that the Graves Amendment preempted vicarious liability imposed on commercial lessors by VTL § 388 and was a valid exercise of Congressional power pursuant to Commerce Clause.

Laws enacted by the federal government pursuant to a delegated power preempt state laws via the Supremacy Clause (U.S. Const., art VI, cl 2). The Commerce Clause delegates to Congress the authority "[t]o regulate Commerce with foreign Nation, and among the several States, and with the Indian Tribes" (U.S. Const., art I, § 8, cl 3), and the U.S. Supreme Court has identified three categories of activity subject to regulation under the Commerce Clause: Congress may regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstates commerce, or persons, or things in interstate commerce; and (3) those activities that substantially affect interstate commerce. United Stated v. Lopez, 514 U.S. 549, 558 - 559 (1995).

In Graham v. Dunkley, —N.Y.S.2d —, 2008 WL 269527 (2d Dept. 2008), plaintiff brought action against driver and vehicle's lessor to recover for personal injuries sustained in motor vehicle accident. The complaint did not allege any affirmative negligence on the part of the defendant lessor, but sought damages from it based on vicarious liability. The defendant lessor moved, *inter alia*, to dismiss the complaint insofar as asserted against it for failure to state a cause of action based on the Graves Amendment. In the underlying decision, the Supreme Court, Queens County, denied lessor's motion to dismiss, holding that the Graves Amendment was an unconstitutional enactment in excess of Congressional power pursuant to the Commerce Clause of the U.S. Constitution. Lessor appealed and the Appellate Division reversed, granting the defendant lessor's motion to dismiss. In support of its decision, the Court stated:

> The finding that Congress had the authority, pursuant to the Commerce Clause, to enact the Graves Amendment, thereby preempting conflicting New York law, ends the analysis (see U.S. Const., art. VI, cl. 2). Should New York wish to provide protection to innocent victims of accidents with leased and rented vehicles, it may require companies to lease or rent vehicles only to drivers with insurance, set up a fund, or take some other legislative action not barred by the federal statute. However, actions against rental and leasing companies based solely on vicarious liability may no longer be maintained (Emphasis added).

Citing as instructive Pierce County, Wash. V. Gullen, 537 U.S. 129 (2003) (where U.S. Supreme Court upheld federal statute which protected information gathered in connection with certain federal highway safety programs from discovery in state actions since the challenged statute aided in, and was related to, the implementation of a federal regulatory program concerning safe highways), the Court in Graham opined that the Graves Amendment regulates an economic activity (the rental and lease of vehicles), that Congress may choose to preempt state liability schemes in order to effectuate regulation of economic activities which affect interstate commerce, and that there can be no real dispute that the rental and lease of vehicles is economic activity which impacts the national market.

In short, based on the above case law, including in particular the recent decision in Graham

v. Dunkley, the Graves Amendment preempts vicarious liability imposed on commercial lessors by VTL § 388 for actions commenced on or after August 10, 2005 and, therefore, such actions against rental and leasing companies may no longer be maintained. However, with regard to situations where an action is commenced prior to August 10, 2005, but the owner-lessor is added as a defendant after August 10, 2005, the question remains outstanding as to whether the Graves Amendment applies so as to preempt vicarious liability claims brought under VTL § 388.

Other Jurisdictions

New York, Maine, and Rhode Island are now the only states that have statutes purporting to impose vicarious liability for an unlimited amount of damages on car owners, including lessors. Graham v. Dunkley, —N.Y.S.2d —, 2008 WL 269527 (2d Dept. 2008), citing Martin, Commerce Clause Jurisprudence and the Graves Amendment: Implications for the Vicarious Liability of Car Leasing Companies, 18 U Fla. J Law & Pub. Policy 153, 157-162.

At least one other state has also held that the Graves Amendment preempts state laws providing for vicarious liability of automobile lessors and rental companies. Hughes v. National Car Rental Systems, Inc., 22 Conn. App. 586 (March 14, 2006).