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to establish, or to continue in effect" for consistency and to eliminate unnecessary words. The words "standard prescribed under this chapter" are substituted for "Federal standard" for clarity. The words "However, the United States . . . may prescribe" are substituted for "Nothing in this section shall be construed to prevent the Federal . . . from establishing" for consistency. The words "of a State" are substituted for "thereof" for clarity. The word "standard" is substituted for "safety requirement" for consistency. The words "performance requirement" are substituted for "standard of performance" to avoid using "standard" in 2 different ways.

Subsection (b)(2) is substituted for 15:1392(d) (2d sentence) for consistency and to eliminate unnecessary words.

In subsection (c), the words "be deemed to" and "of the United States" are omitted as surplus.

In subsection (d), the words "United States" are substituted for "Federal" in 15:1420 for consistency. The words "Consumer" in 15:1420, "not in lieu of" in 15:1410a(e) and 1420, and "not in substitution for" in 15:1394(a)(6) are omitted as surplus. The word "other" is added for clarity.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88 substituted "subchapter I of chapter 135" for "subchapter II of chapter 105" in two places.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of this title.

§ 30104. Authorization of appropriations

There is authorized to be appropriated to the Secretary $98,313,500 for the National Highway Traffic Safety Administration to carry out this part in each fiscal year beginning in fiscal year 1999 and ending in fiscal year 2001.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 944; Pub. L. 105–178, title VII, § 7102(a), June 9, 1998, 112 Stat. 465; Pub. L. 106–39, § 1(a), July 28, 1999, 113 Stat. 206.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30104	15:1392 (note).	Dec. 18, 1991, Pub. L. 102–240, § 2501(a), 105 Stat. 2081.

In this section, before clause (1), the words "to the Secretary of Transportation for the National Highway Traffic Safety Administration" are substituted for "For the National Highway Traffic Safety Administration" for clarity and consistency in the revised title and with other titles of the United States Code. The reference to fiscal year 1992 is omitted as obsolete.

AMENDMENTS

1999—Pub. L. 106–39 substituted "$98,313,500" for "$81,200,000".

1998—Pub. L. 105–178 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "The following amounts may be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out this chapter:

"(1) $71,333,436 for the fiscal year ending September 30, 1993.

"(2) $74,044,106 for the fiscal year ending September 30, 1994.

"(3) $76,857,782 for the fiscal year ending September 30, 1995."

§ 30105. Restriction on lobbying activities

(a) IN GENERAL.—No funds appropriated to the Secretary for the National Highway Traffic Safety Administration shall be available for any activity specifically designed to urge a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body.

(b) APPEARANCE AS WITNESS NOT BARRED.—Subsection (a) does not prohibit officers or employees of the United States from testifying before any State or local legislative body in response to the invitation of any member of that legislative body or a State executive office.

(Added and amended Pub. L. 105–178, title VII, § 7104(a), (c), June 9, 1998, 112 Stat. 466; Pub. L. 105–206, title IX, § 9012(a), July 22, 1998, 112 Stat. 864.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–178, § 7104(c), as added by Pub. L. 105–206, inserted "for the National Highway Traffic Safety Administration" after "Secretary".

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

§ 30106. Rented or leased motor vehicle safety and responsibility

(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).

(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.

(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 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.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) AFFILIATE.—The term "affiliate" means a person other than the owner that directly or indirectly controls, is controlled by, or is under common control with the owner. In the preceding sentence, the term "control" means the power to direct the management and policies of a person whether through ownership of voting securities or otherwise.

(2) OWNER.—The term "owner" means a person who is—

(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;

(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or

(C) a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

(3) PERSON.—The term "person" means any individual, corporation, company, limited liability company, trust, association, firm, partnership, society, joint stock company, or any other entity.

(Added Pub. L. 109–59, title X, § 10208(a), Aug. 10, 2005, 119 Stat. 1935.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

SUBCHAPTER II—STANDARDS AND COMPLIANCE

§ 30111. Standards

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;

(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85–684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.

(c) COOPERATION.—The Secretary may advise, assist, and cooperate with departments, agencies, and instrumentalities of the United States Government, States, and other public and private agencies in developing motor vehicle safety standards.

(d) EFFECTIVE DATES OF STANDARDS.—The Secretary shall specify the effective date of a motor vehicle safety standard prescribed under this chapter in the order prescribing the standard. A standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed. However, the Secretary may prescribe a different effective date after finding, for good cause shown, that a different effective date is in the public interest and publishing the reasons for the finding.

(e) 5-YEAR PLAN FOR TESTING STANDARDS.—The Secretary shall establish and periodically review and update on a continuing basis a 5-year plan for testing motor vehicle safety standards prescribed under this chapter that the Secretary considers capable of being tested. In developing the plan and establishing testing priorities, the Secretary shall consider factors the Secretary considers appropriate, consistent with section 30101 of this title and the Secretary's other duties and powers under this chapter. The Secretary may change at any time those priorities to address matters the Secretary considers of greater priority. The initial plan may be the 5-year plan for compliance testing in effect on December 18, 1991.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 944.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30111(a)	15:1392(a), (b), (e) (1st sentence).	Sept. 9, 1966, Pub. L. 89–563, §§ 102(13), 103(a)–(c), (e), (f), 107 (related to standards), 80 Stat. 719, 721.
30111(b)	15:1391(13). 15:1392(f).	
30111(c)	15:1396 (related to standards).	
30111(d)	15:1392(c), (e) (last sentence).	
30111(e)	15:1392(j).	Sept. 9, 1966, Pub. L. 89–563, 80 Stat. 718, § 103(j); added Dec. 18, 1991, Pub. L. 102–240, § 2505, 105 Stat. 2084.

In subsection (a), the words "shall prescribe" are substituted for "shall establish by order" in 15:1392(a) and "may by order" in 15:1392(e) (1st sentence) for consistency. The words "amend or revoke" in 15:1392(e) (1st sentence) and 1397(b)(1) (last sentence) are omitted because they are included in "prescribe". The words "appropriate Federal" in 15:1392(a) and "Federal" in 15:1392(e) (1st sentence) are omitted as surplus. The words "established under this section" are omitted because of the restatement. The text of 15:1392(b) is omitted as surplus because 5:chs. 5, subch. II, and 7 apply unless otherwise stated.

In subsection (b)(1), the words "including the results of research, development, testing and evaluation activities conducted pursuant to this chapter" are omitted as surplus.

In subsection (b)(2), the words "agency established under the Act of August 20, 1958 (Public Law 85–684, 72 Stat. 635)" are substituted for 15:1391(13) and "the Vehicle Equipment Safety Commission" in 15:1392(f) because of the restatement. The citation in parenthesis is included only for information purposes.

In subsection (b)(4), the words "contribute to" are omitted as surplus.

In subsection (c), the words "departments, agencies, and instrumentalities of the United States Government, States, and other public and private agencies" are substituted for "other Federal departments and agencies, and State and other interested public and private agencies" for consistency. The words "planning and" are omitted as surplus.

In subsection (d), the words "The Secretary" are added for clarity. The words "effective date" are sub-

2010 NY Slip Op 51108(U)

MIKHAIL VINOKUR, Plaintiff,

v.

ASHA RAGHUNANDAN, MICHAEL RADHUNANDAN, ANNE MARIE LEMOINE, PV HOLDING CORP. AND MARIO REGINA, Defendants.

21901/08.

Supreme Court, Kings County.

Decided June 25, 2010.

Defendants PV Holding Corp. and Mario Regina were represented by David S. Aronowitz, Esq. of Shapiro, Beilly, Rosenberg & Aronowitz, LLP.

No other party submitted papers on the motion.

JACK M. BATTAGLIA, J.

This action arises from a multi-vehicle collision on the Belt Parkway on September 6, 2007. In his Complaint, plaintiff Mikhail Vinokur alleges, among other things, that defendant PV Holding Corp. ("PV Holding"), the owner of one of the involved vehicles, negligently entrusted its vehicle to defendant Mario Regina (*see* Complaint, ¶¶ 31-36); and that defendant Mario Regina negligently operated the vehicle in the course of his employment for PV Holding (*see* Complaint, ¶¶ 14-15).

The law firm Shapiro, Beilly, Rosenberg & Aronowitz LLP ("the Law Firm") represents movant PV Holding, as well as defendant Mario Regina. The Law Firm, on behalf of PV Holding, seeks summary judgment dismissal of the Complaint and all cross-claims and counterclaims as against PV Holding, based upon the Graves Amendment (*see* 49 USC § 30106). On May 3, 2010, which was the original return date of the motion, this Court recognized *sua sponte* that the law firm has a potential conflict of interest in its representation of both defendants PV Holding and Mario Regina. As such, the Court ordered the Law Firm to submit a further brief regarding the potential conflict.

Where it has been determined that counsel has a concurrent conflict of interest, it has been held that the lawyer should be disqualified from representing both clients. (*See* Alcantara v Mendez, 303 AD2d 337, 338 [2d Dept 2003]; Sidor v Zuhoski, 261 AD2d 529, 530 [2d Dept 1999] ["An attorney who undertakes the joint representation of two parties in a lawsuit should not continue as counsel for either one after an actual conflict of interest has arisen because continued representation for either or both parties would result in a violation of the ethical rules requiring an attorney to preserve a client's confidences or the rule requiring an attorney to represent a client zealously" (citations, internal quotation marks, and brackets omitted)].) A motion to disqualify is addressed to the sound discretion of the court, and "any doubts are to be resolved in favor of disqualification." (*Matter of* Stober v Gaba & Stober, P.C., 259 AD2d 554, 555 [2d Dept 1999].) The Court may raise the issue of disqualification *sua sponte,* and should do so under certain circumstances. (*See* People v Swanson, 43 AD3d 1331, 1332 [4th Dept 2007] [violation of witness-advocate rule]; *see also* Boyd v Trent, 287 AD2d 475, 475-76 [2d Dept 2002] [conflict of interest].)

A Federal statute, known as the Graves Amendment and codified at 49 USC § 30106, "bars vicarious liability actions against professional lessors and renters of vehicles", as would otherwise be permitted by Vehicle and Traffic Law § 388. (*See* Graham v Dunkley, 50 AD3d 55, 58 [2d Dept 2008].) The Graves Amendment provides, in pertinent 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 . . ., 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, if . . . 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*." (42 USC § 30106[a][emphasis added].)

In its Supplemental Affirmation, the Law Firm contends, among other things, that it does not have a conflict of interest since any liability as against PV Holding (the leasing company) would only have been vicarious through Vehicle and Traffic Law § 388, which is barred by the Graves Amendment. In this regard, the Law Firm contends that the other causes of action alleged against PV Holding, *i.e.,* negligent entrustment and *respondeat superior,* were not addressed in Plaintiff's Bill of Particulars, and do not have any merit. (*See e.g. Drake v Karahuta,* (2010 WL 376388, *3 [WDNY 2010] ["Plaintiff's failure to allege any basis for independent negligence against [the leasing company] (other than vicarious liability under NY Vehicle and Traffic Law § 388) negates any possibility of independent liability by [the leasing company]. Therefore, defense counsel does not have a conflict of interest in asserting a Graves Amendment defense.")

The Rules of Professional Conduct, which were promulgated as joint rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, and which supersede the former Part 1200 (Disciplinary Rules of the Code of Professional Responsibility), govern the resolution of the issue of the Law Firm's potential conflict of interest. Rule 1.7 (a) of the Rules of Professional Conduct provides that, "Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that . . . the representation will involve the lawyer in representing differing interests." (Rules of Professional Conduct [22 NYCRR 1200.0] Rule 1.7 [a].) Paragraph (b) sets forth necessary conditions that allow an attorney to represent parties with differing interests.

The first question, then, is whether, under the circumstances of this case, a reasonable lawyer would conclude that the Law Firm's representation of both the driver Mario Regina and the leasing company PV Holding will involve the Law Firm in "representing differing interests". In its Supplemental Affirmation, the Law Firm suggests that this determination should be made as of the time when the issue of the potential conflict of interest is raised, *i.e.,* as of now. In this regard, the Law Firm points out that the issue was raised by the Court *sua sponte* after disclosure was complete, and only after the Law Firm brought a motion for summary judgment.

Nonetheless, the language of Rule 1.7(a) requires that the determination be made as of the time it becomes apparent to a reasonable lawyer that the dual representation "will involve the lawyer in representing differing interests." For reasons that will follow, in this case a reasonable lawyer should have been aware of the conflict of interest upon receipt of Plaintiff's Complaint. (*See e.g. Graca v* ***Krasnik,*** **20 Misc 3d 1127**[A], 2008 NY Slip Op 51640[U], *3 [Sup Ct, Kings County, Saitta, J.]["The conflict exists at the point the attorney recognizes that one of their two clients may have a Graves Amendment defense.")

In *Graca v* ***Krasnik*** (**20 Misc 3d 1127**[A], 2008 NY Slip Op 51640[U]), the court raised *sua sponte* the issue of a potential conflict where, as here, a law firm represented both the driver of a leased vehicle and the leasing company, and the law firm was moving for summary judgment on behalf of the leasing company based upon the Graves Amendment. It was held, among other things, that there is an "inherent conflict of interest in representing the named defendants where, if the case against one defendant (owner/lessor) is dismissed pursuant to the Graves Amendment, the other defendant (driver) is left bearing full liability for the claims alleged in Plaintiff's complaint." (*Id.* at *3.) The court reasoned that "Defendants' attorneys cannot zealously represent both Defendants where they seek dismissal of the claims against one of the defendants they represent while the other has no independent advocate to oppose the motion which would result in their shouldering full liability." (*Id.*) The court pointed out that "the mere assertion of a Graves Amendment defense does not mean there are no questions of fact as to whether the Amendment applies"; and that the Graves Amendment "is only a defense to vicarious liability, so a defendant must also demonstrate that there was no negligence on their [*sic*] part." (*See id.*). The court further held that "the issue giving rise to the conflict of interest, the dismissal of the claim against one defendant shifting liability to the other, rises to a level that full disclosure and consent would not cure."

In *Meigel v Schulman* (24 **Misc 3d** 1242[A], 2009 NY Slip Op 51853[U] [Sup Ct, Kings County, Saitta, J.]), the same court again recognized the "inherent conflict of interest"; and further held that even where there is a provision in the

lease requiring the driver to indemnify the leasing company for any losses arising from the use of the vehicle, there is still an inherent conflict of interest where "there is a possibility that the leasing company may have been negligent." (*See id.* at *2.) In *Meigel,* the court disqualified the law firm from representing the driver even though the law firm submitted an affidavit from the driver admitting that there was no mechanical defect in the vehicle.

In *Drake v Karahuta,* (2010 WL 376388), a federal magistrate held, under similar circumstances, that a law firm representing both the driver and leasing company does not have a conflict of interest in asserting a Graves Amendment defense where "discovery is complete, and plaintiff has neither alleged nor sought to prove any basis other than vicarious liability for its claim against [the leasing company]." (*See id.* at *2.)

Although neither *Graca, Meigel,* nor *Drake* analyzed the issue of the potential conflict of interest under the new Rules of Professional Conduct, they are still persuasive on the question of potential conflict of interest under the facts presented here. Indeed, it has been noted that the Rules of Professional Conduct "include[s] approximately three-quarters of the former [Code of Professional Responsibility], with the remaining one quarter coming from the ABA's Model Rules", and that the new rules do not necessarily eviscerate the holdings in cases decided based upon the Code of Professional Responsibility. (*See Delorenz v Moss,* 24 **Misc 3d** 1218 [A], 2009 NY Slip Op 51519[U], *2 [Sup Ct, Nassau County, Palmieri, J.]

Graca and *Meigel* stand for the proposition that a law firm representing both the leasing company and the driver has an inherent conflict of interest where the law firm seeks to move for dismissal of the complaint only as against the leasing company since the driver would be left bearing full liability. *Drake* stands for the proposition that a law firm, representing both the leasing company and the driver, that raises the Graves Amendment defense to dismiss the action against the leasing company has a conflict of interest only where there are allegations asserted against the leasing company other than vicarious liability under Vehicle and Traffic Law § 388, presumably because the Graves Amendment bars the imposition of liability against the leasing company solely "by reason of being the owner of the vehicle" (*see* 49 USC § 30106[a].)

This Court agrees with *Graca* and *Meigel* that a law firm has an inherent conflict of interest in representing both the leasing company and the driver, regardless of whether the only claim against the leasing company is vicarious liability based upon Vehicle and Traffic Law § 388. As noted in *Graca,* the fact that a party asserts a Graves Amendment defense does not mean that the driver would have no basis to oppose that party's summary judgment motion. (*See Graca v* ***Krasnik,*** **20 Misc 3d 1127**[A], 2008 NY Slip Op 51640[U], at *3.) In this regard, a party asserting the Graves Amendment as a basis for summary judgment dismissal of a Vehicle and Traffic Law § 388 cause of action must establish *prima facie* that it was engaged in the business of leasing vehicles, a fact which a driver having independent counsel may challenge. (*See id.* at *3.)

In addition, even though a plaintiff may in some circumstances not assert any other basis of liability against a leasing company other than vicarious liability pursuant to Vehicle and Traffic Law § 388, a driver of the leased vehicle may assert, if appropriate, cross-claims against the leasing company for, among other things, having provided the driver with a vehicle with a mechanical defect. (*See generally Estate of Byrne v Collins,* 25 **Misc 3d** 1232[A], 2009 NY Slip Op 52395[U], *4 [Sup Ct, Kings County, Rivera, J.]; *Luma v Elrac, Inc.,* 19 **Misc 3d** 1138[A], 2008 NY Slip Op 51062 [U][Sup Ct, Kings County, Battaglia, J.], *2 ["Vicarious liability (under the Graves Amendment) is not abrogated where the injury or damage results from the negligence of the owner's employee in the operation or maintenance of the vehicle, nor where it seems the owner was negligent in entrusting the vehicle to the operator."].)

In any event, even if this Court were to adopt the holding of the *Drake* decision, the reasoning of *Drake* leads to the conclusion that the Law Firm has a conflict of interest. Plaintiff's Complaint alleges a cause of action for negligent entrustment as against PV Holding, as well as cause of action alleging that PV Holding is vicariously liable for the driver Mario Regina's negligence based upon *respondeat superior.* If the driver has possession of the vehicle under circumstances that allow for liability based upon *respondent superior,* the "harm to persons or property" would not "result[] or arise[] out of the use, operation, or possession of the vehicle during the period of [a] rental or lease." (*See* 42 USC § 30106[a].) Since the Complaint alleges causes of action against PV Holding other than vicarious liability

under Vehicle and Traffic Law § 388, the Law Firm would still have a conflict of interest under *Drake* because of Plaintiff's causes of action for negligence that have not been abrogated by the Graves Amendment.

Even though this Court has concluded that the Law Firm has a concurrent conflict of interest since "a reasonable lawyer would conclude that . . . the representation will involve the lawyer in representing differing interests"(*see* Rules of Professional Conduct [22 NYCRR 1200.0] Rule 1.7 [a]), the Law Firm may still represent both clients if conditions set forth in Rule 1.7(b) of the Rules of Professional Conduct are met. Rule 1.7(b) provides that, "Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing." (Rules of Professional Conduct [22 NYCRR 1200.0] Rule 1.7 [b].)

In its Supplemental Affirmation, the Law Firm fails to even address the criteria set forth Rule 1.7(b). In any event, it is clear that the conditions specified in Rule 1.7(b) have not been met because the Law Firm failed to, among other things, attach any writing demonstrating that Mario Regina gave his "informed consent, confirmed in writing." Even if the Law Firm were to have submitted such a writing, it may not be possible, under circumstances here, to show that "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client", or that the "the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation." (*See e.g. Graca v* ***Krasnik,*** **20 Misc 3d 1127**[A], 2008 NY Slip Op 51640[U], at *4 ["Here, the issue giving rise to the conflict of interest, the dismissal of the claim against one defendant shifting liability to the other, rises to a level that full disclosure and consent would not cure."]; *see also generally* Greene v Greene, 47 NY2d 447, 451-52 [1979] ["Because dual representation is fraught with the potential for irreconcilable conflict, it will rarely be sanctioned even after full disclosure has been made and the consent of the clients obtained]; *Tavarez v Hill,* 23 **Misc 3d** 377, 382 [Sup Ct, Bronx County 2009, Victor, J.].)

In *Meigel,* for example, the court noted that it was "difficult to imagine an attorney, who represented only the driver, agreeing that [the leasing company] was not negligent based on the fact that the driver, who is not an expert, thought there was nothing [wrong] with the car"; that an attorney representing only the driver would procure such an affidavit from the driver; that "an independent counsel would almost certainly at a minimum insist on conducting discovery" of the leasing company's maintenance and service records; that the driver would need for separate counsel to "evaluate whether there was a basis to argue" the inapplicability of the Graves Amendment to a particular case; and that "there [may] be situations in which [independent] counsel would conclude that having the leasing company remain in the case, if there is a legal basis for doing so, may increase the chances of a favorable settlement". These concerns, which may have been issues in this case had the driver, Mr. Regina, had separate counsel, are all relevant to the determination as to the first prong of Rule 1.7(b), *i.e.,* whether "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client."

Similarly, as to the third prong set forth in Rule 1.7(b), although neither the driver Mr. Regina nor the leasing company PV Holding has asserted claims against one another, one cannot say that, had they each had separate counsel, they would not have done so under the facts of this case. In any event, the Court need not offer any opinion as to whether "the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal" since two of the other prongs have not been met.

In *Graca,* in which the court raised the issue of disqualification *sua sponte,* and which is analogous to the instant case on its facts, the court only disqualified the law firm from "continuing to represent both Defendants simultaneously", and stayed the action for "new counsel to be provided to [the driver, the leasing company], or both." (*See Graca v* ***Krasnik,*** **20 Misc 3d 1127**[A], 2008 NY Slip Op 51640[U], at *4.) In *Meigel,* the court only disqualified the law firm from representing the driver. (*See Meigel v Schulman,*24 **Misc 3d** 1242[A], 2009 NY Slip Op 51853[U], at *3.)