

>> ALL RISE.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> LAST CASE ON THE COURT'S  
AGENDA FOR TODAY IS VARGAS V.  
ENTERPRISE LEASING.

MS. GRAHAM, ARE YOU READY TO  
PROCEED?

>> YES, I AM.

MAY I PLEASE THE COURT, I'M  
MARJORIE GADARIAN GRAHAM FROM  
PALM BEACH GARDEN.

I REPRESENT THE PETITIONER,  
RAFAEL VARGAS.

MR. WASSON WILL ARGUE ON BEHALF  
OF THE JUSTICE ASSOCIATION AND  
GARCIA WHO WAS TRIAL FOR  
MR. VARGAS THIS YEAR.

BEFORE I BEGIN THE ARGUMENT, I  
WANT TO POINT OUT TO THE COURT  
THAT IT INTENDED JUDGMENT WAS  
ENTERED FOR ENTERPRISE LEASING.  
AFTER JUDGE GERBER GRANTED THE  
NOTION FOR SUMMARY JUDGMENT,  
ENTERPRISE DID WHAT WAS IN  
EFFECT GIVING CONCESSION  
FOR ENTRY OF JUDGMENT AGAINST IT  
FOR THE AMOUNT OF TIME, A THOUSAND  
DOLLARS PURSUANT TO 324  
SUBSECTION SEVEN.

THE COURT HAD SET FORTH THE  
FLORIDA PROVISIONS FOR THE  
GRAVES AMENDMENT, WHICH PREEMPT  
BY LIABILITY LAWS BUT HAS AN  
EXCEPTION TO IT.

THE ISSUE BEFORE YOU TODAY  
NARROWLY STATED CERTIFIED BY THE  
FOURTH DISTRICT IN THIS CASE AND  
THEIR NUMEROUS OTHER CASES AS I  
UNDERSTAND IT THAT AT THE SAME  
CERTIFIED QUESTIONS.

THAT IS WHETHER 324021  
SUBSECTION NINE, WHICH IS THE  
SHORT-TERM RENTAL PROVISION, IS A  
FINANCIAL RESPONSIBILITY BOUGHT  
AND LINKED WITH THAT IS ALSO  
WHETHER THE ENTIRE SUBSECTION OF  
THE TWO, B NINE IMPOSES  
REQUIREMENTS.

>> I'M SORRY, GO AHEAD.

>> IT SEEMS TO ME THAT IF WE  
ACCEPT YOUR INTERPRETATION OF  
THESE, THEN WHERE DOES THAT GIVE  
US WITH THE FIRST SECTION?

IT SEEMS TO ME IT'S ORDERING  
SORT OF A CA FITS, RIGHT?  
THERE IS NO MORE WORLD LAST AND  
A FEW SITE B IS A TOTAL  
EXCEPTION.

>> YOU'RE TALKING ABOUT  
SUBSECTION A FOUNDING ON HER  
PROVISION?

>> YES.

THE WAY YOU ARE READING B,  
YOU DON'T HAVE ANYTHING  
LEFT TO SAY.

IF B, UNDER THE CIRCUMSTANCES  
THEY SEE A, THEREFORE TAKES AWAY  
THE SETTLE OF PREEMPTION ARE,  
WHAT IS LEFT TO OPERATE UNDER A.  
THAT'S MY REAL QUESTION.

>> I'M NOT SURE THAT I UNDERSTAND --  
>> WELL, WHY DON'T YOU JUST GO ON AND MAYBE AS YOU GET INTO YOUR ARGUMENTS, MAYBE I'LL UNDERSTAND MORE WHAT YOU THINK B DOES.

>> WHAT I THINK B2 DOES. AND I HAVE TO TOUCH ON SUBSECTION A DEALS WITH GOULD VEHICLE TITLES FOR ILLEGAL CONDITIONAL SALE.

AND OUR POSITION IS IT'S PRETTY SIMPLE.

SUBSECTION B2, WE BELIEVE, IS A LIABILITY LAW AND WE POINTED OUT TO THE COURT IS PLACED IN THE CHAPTER THAT DEALS WITH FINANCIAL RESPONSIBILITY OF VEHICLE OWNERS AND OPERATORS IN THE STATE OF FLORIDA.

I DON'T THINK I NEED TO REITERATE THAT CERTAINLY WHAT CHAPTER YOU PUT IT IN AND WHAT THE TITLE OF THAT CHAPTER IS IS INDICATIVE OF WHAT THE INTENT OF THE STATE LEGISLATURE WAS.

BUT I WOULD ALSO SUGGEST TO YOU THAT IF YOU LOOK AT THE VARIOUS SESSION LAWS THAT HAVE AMENDED 3240219 B, THOSE PORTIONS OF SUBSECTION ONE AND SUBSECTION TWO AND I WILL GIVE YOU THE SECTION LAWS THAT HAVE AMENDED IT.

IF YOU LOOK AT -- 96-360,

WHICH AMENDED THE STATUTE IN THE INTRODUCTORY PORTION OF THAT SESSION LOCK, IT SAYS THAT THE DEMANDS SECTION 324021 TO REVISE THE DEFINITION OF OWNER RAPPOR TO PROVIDE ALTERNATIVES, MINIMUM LIMITS ON CERTAIN LIABILITY COVERAGE FOR CERTAIN MOTOR VEHICLES, LEASE AGREEMENT UNDER CERTAIN CIRCUMSTANCES.

IN ADDITION, SECTION 88370 AMENDED THIS PARTICULAR STATUTE AND AGAIN IT AMENDED 324021 TO INCREASE THE AMOUNT OF PROPERTY DAMAGE INSURANCE AND CLARIFIED APPLICABILITY OF INSURANCE REQUIREMENTS TO OWNERS AND LESSORS.

AND ALTHOUGH SUBSECTION B2 DOES NOT EXPLICITLY STATE THAT YOU HAVE TO REQUIRE INSURANCE COVERAGE FROM THE LESSEE, I THINK IT IS IMPLICIT WHEN YOU READ THAT STATUTE AND YOU READ THE LONG-TERM LEASE STATUTE, THAT WAS A RENTAL CAR COMPANIES CAN DO IS ELIMINATE ANY LIABILITY IS TO REQUIRE THEIR LESSEE IS TO HAVE INSURANCE COVERAGE.

>> BUT ISN'T THAT REALLY DIFFERENT THAN WHAT THE CONGRESS CAN RECENTLY BE UNDERSTOOD TO HAVE MEANT BY IT FINANCIAL RESPONSIBILITY?

AND ISN'T THE REAL QUESTION HERE

NOT WHAT THE PARTICULAR WAY OF THE FLORIDA IS ORGANIZED WITH THE TITLES AND THE WORD APPEARS ON THE FLORIDA STATUTE.

BUT WHETHER IT FALLS WITHIN THE SCOPE OF WHAT THE CONGRESS WAS TALKING ABOUT WHEN THEY TALKED ABOUT FINANCIAL RESPONSIBILITY LAWS.

>> WELL, I DON'T KNOW THAT I UNDERSTAND YOUR QUESTION, BUT I'LL TRY TO ANSWER AS BEST I CAN.

FINANCIAL RESPONSIBILITY LAWS CAN BE EITHER AS THE FLORIDA STATUTE PERMITS, YOU CAN EITHER HAVE INSURANCE COVERAGE TO PROVE FINANCIAL RESPONSIBILITY UNDER I BELIEVE IT'S 324.032, THERE ARE ALTERNATIVE WAYS YOU CAN ALSO PROVE FINANCIAL RESPONSIBILITY BY POSTING A BOND.

>> THE FINANCIAL RESPONSIBILITY IS ABOUT HAVING INSURANCE OR AN INSURANCE EQUIVALENT.

IT IS DISTINCT FROM LIABILITY.

ISN'T THAT CORRECT?

>> I BELIEVE SO, YES.

>> WELL, ISN'T THAT PROBLEMATIC FOR YOUR CASE?

>> NOT REALLY.

I MEAN, I DON'T THINK SO, BUT IF YOU WANT TO ELIMINATE ANY EXPOSURE AS A RENTAL CAR COMPANY, YOU ASSURE THAT THE LESSEE HAS INSURANCE COVERAGE IN

TERMS OF SHORT TERM RENTAL AND  
AT LEAST THE AMOUNT OF \$500,000.  
AND GOING TO, FOR INSTANCE, AND  
THIS IS COVERED IN THE JUSTICE  
ASSOCIATION BRIEF.

IF YOU LOOK AT THE CONGRESSIONAL  
RECORD, IT APPEARS FROM THE  
DISCUSSION THAT IS SET FORTH  
THEIR VOW WHAT CONGRESS WANTED  
TO PREEMPT WAS THOSE KINDS OF  
STATE LAWS THAT HAD UNLIMITED  
VICARIOUS LIABILITY, WHICH  
FLORIDA DOES NOT HAVE.

>> WAS PARADED THE STATUTE DO  
YOU READ THIS UNLIMITED  
REQUIREMENT FROM?

I MEAN, IT SEEMS TO ME THAT THE  
STATUTE DOESN'T USE THAT -- IT  
CERTAINLY DOESN'T USE A  
PARTICULAR WORD AND I'M TRYING  
TO FIGURE OUT WHAT LANGUAGE AND  
IF WE CAN INTERPRET TO SAY THAT  
IS WHAT CONGRESS INTENDED.

THE UNLIMITED.

>> THE UNLIMITED DISCUSSION IS  
IN THE CONGRESSIONAL RECORD,  
WHICH IS ATTACHED TO THE  
APPENDIX TO THE JUSTICE  
ASSOCIATION BRIEF.

AND THE DISCUSSION THERE TALKS  
ABOUT, IN ESSENCE, PREEMPTING  
STATE LAWS THAT HAVE UNLIMITED  
VICARIOUS LIABILITY EXPOSURE ON  
THE PART OF RENTAL CAR  
COMPANIES.

SUBSECTION B2 OF THE FLORIDA

STATUTE, IN EFFECT --

>> YOU'RE SAYING IT ACTUALLY LIMITS THE VICARIOUS LIABILITY FOR THE AMOUNT INDICATED IN THE SUBSECTION.

>> TO 500,000 IF THE LESSEE IS UNINSURED.

>> CAN WE GO BACK TO, IT SEEMS TO ME THAT THE FUNDAMENTAL DISCUSSION AND DECISION THAT HAS TO BE MADE HERE IS WHETHER THE USE OF THE WORDS FINANCIAL RESPONSIBILITY IN REFERENCE TO LAWS MEANS OR REFERS TO THOSE LAWS THAT REQUIRE CERTAIN AMOUNT OF INSURANCE AS A PREREQUISITE TO LICENSING AND REGISTERING VEHICLES, AS WE'VE HAD IN FLORIDA FOR A NUMBER OF YEARS, WHICH IS VERY, VERY MINIMAL. OR WHETHER THAT TERM IN THE FEDERAL STATUTE CAN ACCOUNT TO SOMETHING THAT TOUCHES ON INSURANCE, BUT IT'S NOT IN THE NATURE OF QUOTE, REQUIRING FINANCIAL RESPONSIBILITY FOR THE ISSUANCE OF REGISTRATION OF LICENSING.

WHY IS IT THAT IT IS THE LATTER BEING THE STATUTE THAT YOU ARE RELYING ON AS OPPOSED TO THOSE STATUTES THAT REQUIRE CERTAIN INSURANCE TO GET THE VEHICLES REGISTERED, BUT SHOULD ALSO BE INCLUDED IN THAT CATEGORY. DO YOU UNDERSTAND MY QUESTION?

>> I'M NOT SURE I DO.

>> DO YOU AGREE THAT THERE ARE TWO CATEGORIES OF TYPES OF INSURANCE STATUTES.

THERE IS A TRADITIONAL FINANCIAL RESPONSIBILITY REQUIREMENT THAT STATES REQUIRE, THE POSTING OF CERTAIN INSURANCE OR BONDING AS A PREREQUISITE TO LICENSE AFTER YOU HAVE BEEN ACCIDENT?

THOSE ARE GENERALLY REFERRED TO AS FINANCIAL RESPONSIBILITY ACT, ARE THEY NOT?

THE QUESTION I THINK YOU HAVE TO ADDRESS WITH US IS WHY THE SECOND PROVISION IN CONNECTION WITH THE LEASING OF VEHICLES IN FLORIDA SHOULD BE ALSO INCLUDED WITHIN THE CONCEPT OF FINANCIAL RESPONSIBILITY LAWS AS I FIRST DESCRIBED.

>> WELL, THE AMENDMENT SPECIFIES THAT NOTHING IN THIS SECTION STATES OR POLITICAL SUBDIVISION THAT IMPOSES FINANCIAL RESPONSIBILITY FOR ENSURING STANDARDS FOR REGISTERING AND AUTHORIZING OTHER VEHICLES.

>> RIGHT, FINANCIAL RESPONSIBILITY LAWS DO THAT, DO THEY NOT?

THE SECOND STATUTE DOES NOT ADDRESS REGISTRATION.

AS IS MY CONCERN IS THAT I THINK YOU NEED TO ADDRESS AT THIS POINT.



WHY THE STATUTE IS THE LESSOR  
SATISFIES AND IS PART OF THE  
DEFINITION OF THE FEDERAL  
STATUTE.

>> I THINK, JUSTICE LEWIS, WHAT  
HAS BEEN FOUND IS FINANCIAL --  
IMPOSING FINANCIAL  
RESPONSIBILITY DIFFERENT FROM  
INSURANCE STANDARDS FOR THE  
PRIVILEGE OF RENTING AND ORDER  
OPERATING.

[INAUDIBLE]

BUT IF THE TERM FOR THE  
PRIVILEGE OF REGISTERING AND  
OPERATING A MOTOR VEHICLE ONLY  
PERTAINS TO THE INSURANCE  
STANDARD FOR THE OWNER OR  
OPERATOR FOR OWNING OR OPERATING  
IN THE STATE OF FLORIDA AND IT  
DOES NOT MODIFY OR PERTAIN TO  
IMPOSING FINANCIAL  
RESPONSIBILITY.

THEN, IN THE CIRCUMSTANCES I  
THINK SUBSECTION B2 IS DIFFERENT  
AND THAT'S WHAT YOU'RE SAYING IS  
DIFFERENT FROM SOMETHING LIKE  
SUBSECTION SEVEN THAT SAYS YOU  
HAVE TO HAVE A POLICY --

[INAUDIBLE]

SO I BELIEVE THAT YOU CAN SAY  
THERE ARE TWO DIFFERENT  
CONCEPTS.

HAVE I ANSWERED YOUR QUESTION?

>> WHY DO WE HAVE TO EVEN GUESS  
AT WHAT FINANCIAL RESPONSIBILITY  
LAWS MEAN?

THE FEDERAL STATUTE IN  
SUBSECTION A SATISFIED ONE WHO  
RENTS TO ANOTHER SHALL NOT BE  
LIABLE UNDER THIS LAW OF ANY  
STATE BY REASON TO BE IN THE  
HONOR OF THE VEHICLE.

AND ALMOST THAT EXACT LANGUAGE  
APPEARS IN THE FLORIDA STATUTE  
THAT SAYS A RENTER SHALL BE  
DEEMED AN OWNER OF THE MOTOR  
VEHICLE FOR THE PURPOSE OF  
DETERMINING LIABILITY FOR THE  
OPERATION OF THE VEHICLE.

IT'S THAT EXACT LANGUAGE ALMOST  
THAT APPEARS IN THE FLORIDA  
STATUTE.

SO WHY ISN'T THAT EXACTLY  
PREEMPTED BY THE FEDERAL  
STATUTE?

>> BECAUSE IT IS OUR DECISION, DO  
WE FALL WITHIN THE EXCEPTION TO  
THE PREEMPTION LANGUAGE IN THE  
EXCEPTION AS LAWS THAT IMPOSE  
FINANCIAL RESPONSIBILITY OR  
SECONDLY, INSURANCE STANDARDS  
FOR OPERATING.

>> WOULD THERE BE ANY LIABILITY  
TO ENTERPRISE BUT FOR THE  
FLORIDA STATUTE?

SUBSECTION B2?

>> YOU MEAN UNDER THE GRAVES  
AMENDMENT?

>> WOULD THERE BE A LIABILITY  
AGAINST THE PLAINTIFF BUT FOR  
SUBSECTION B2.

ON WHERE THE LIABILITY LAYS, ISN'T

IT?

>> ACTUALLY --

[INAUDIBLE]

AND SO YES, THE RELIANCE WOULD THEN COME TO THE GRAVES AMENDMENT AND IF THE STATUTE --

>> WELL, ACTUALLY IN THE SEQUENCE HERE BEFORE YOU COME TO THE GRAVES AMENDMENT, YOU COME TO THE STATUTE THAT WE'RE TALKING ABOUT, THE FLORIDA STATUTE, WHICH LIMITS THE LIABILITY OF THE RENTAL CAR COMPANY.

ISN'T THAT CORRECT?

AND THEN THERE IS THE GRAVES AMENDMENT.

>> IT DOES LIMIT IT.

>> BUT STILL, THIS WHOLE STATUTE WE'RE FOCUSED ON HERE IS AN OUTGROWTH OF THE DANGEROUS INSTRUMENTALITY DOCTRINE, JUST A LIMITATION ON IT BUT IT'S ALL PREDICATED ON THE DANGERS INSTRUMENTALITY DOCTRINE AND THE APPLICATION OF THAT IS A RENTAL CAR COMPANY.

ISN'T THAT CORRECT?

>> YES, EXCEPT THAT GRACE HAS AN AM I OVER MY TIME?

>> YES YOU ARE.

>> CAN I HAVE PERHAPS A MINUTE FOR REBUTTAL?

THANK YOU.

>> GOOD MORNING, YOUR HONOR. DATED SOMEONE FROM THE JUSTICE

DEPARTMENT IS LIKE TO THE COURT  
TO THE STANDARD OF THE REVIEW OF  
THE FEDERAL PREEMPTION ISSUE  
UNDER THE U.S. SUPREME COURT'S  
CASE OF ALL TREATED GROUP V.  
GOOD WITH THE PREEMPTION CLAUSE  
IS ACCEPTABLE TO MORE THAN ONE  
PLAUSIBLE MEANING EXCEPT TO  
READING THAT DISFAVORS  
PREEMPTION.

I WOULD SUGGEST TO THE COURT  
THAT THE EXCEPTIONS TO THE  
FEDERAL IMMUNITY UNDER THE  
GREATEST AMENDMENT IS SUBJECT TO  
MORE THAN ONE POSSIBLE READING  
BECAUSE THEN SUBSECTION B2,  
WHETHER CONGRESS SAID THAT  
THERE'S NOTHING HERE TO PERMIT  
STATES FROM IMPOSING LIABILITY  
ON BUSINESS ENGAGED IN THE  
GREATER BUSINESS OF LEASING FOR  
PHIL TO ME TWO THINGS.

ONE, FINANCIAL RESPONSIBILITY OR  
TWO, LIABILITY INSURANCE  
REQUIREMENTS UNDER STATE LAW.  
FOR THE CONGRESS ALL THESE  
THINGS THAT TWO DIFFERENT  
THINGS, FINANCIAL RESPONSIBILITY  
IS WHAT JUSTICE LEWIS WAS  
TALKING ABOUT.

THOSE LAWS ARE IMPOSED FOR  
REQUIRING FINANCIAL  
RESPONSIBILITY TO THE COMMISSION  
OF GETTING REGISTRATION OF THE  
VEHICLE NOT SORT OF OF THING.  
BUT THE CONGRESS ALSO SAID YOU

CAN PAST LIABILITY INSURANCE REQUIREMENTS AND WHAT LIABILITY INSURANCE REQUIREMENT THAT THE FLORIDA LEGISLATURE HAS PASSED IN 324.0219 B IS THE ONE THAT OPPOSED LIABILITY ON THE CAR RENTAL COMPANY AT THE LESS HE DOES NOT HAVE --

>> IT'S NOT REALLY A REQUIREMENT FOR INSURANCE.

IT'S KIND OF AN EXCEPTION FOR THE LIABILITY AND CIRCUMSTANCES FOR THE INSURANCE IS AVAILABLE.

IS THAT CORRECT?

AS OPPOSED TO AN ACTUAL REQUIREMENT FOR INSURANCE.

IT MAY BE AN ENCOURAGEMENT, BUT THAT'S DIFFERENT THAN A REQUIREMENT.

IS IT NOT?

>> I THINK IT IS A REQUIREMENT.

IT'S NOT A REQUIREMENT FOR LICENSING, BUT IT'S A REQUIREMENT TO AVOID THE IMPOSITION OF LIABILITY.

YOU ARE IMPOSED LIABILITY FOR ANOTHER \$500,000 IN ECONOMIC DAMAGES IF THE INSURANCE REQUIREMENT IS TO ADMIT.

>> IF WE ACCEPT YOUR READING OF B2 AND B2 OF THE GRAVES AMENDMENT AND THEN WE SAY THAT B2 OF OUR STATUTE REQUIRES THEM TO HAVE INSURANCE, THE LESSER, WHAT IS LEFT TO SUBSECTION A., WHICH IS THE ACTUAL PREEMPTION

FORCE?

>> THAT TAKES THEM BACK TO THE CONGRESSIONAL INTENT TO ONLY APPLY THE STATUTE WHETHER IS NOT A LIMITATION ON LIABILITY THAT WOULD BE TEMPTED TO A FINANCIAL RESPONSIBILITY EXCEPTION.

ONLY THOSE AS REPRESENTATIVE GRAVES AND SENATOR SANTERIA SAID THIS WAS ENACTED TO PERFORM QUOTE, LAWS THAT THREATEN THEM WITH LIABILITY.

>> YOU KNOW, IT'S ONE THING TO STAND UP THERE AND SAY WE'RE DOING THIS BECAUSE THEY WERE DOING.

BUT THAT DOESN'T ANSWER THE QUESTION OF WHETHER THEY MIGHT BE DOING SOME OTHER THINGS AS WELL AND AFFECTING OTHER TYPES OF LAWS THAT IMPOSE VICARIOUS RESPONSIBILITY THAT'S NOT UNLIMITED.

AND FOR THAT FROM THOSE SEGMENTS AND EVEN IF YOU THINK OF THE LEGISLATIVE HISTORY IS PERFECTLY CONSIDERED, ISN'T IT A BIT OF A STRETCH WHEN THERE'S NOTHING, NOTHING IN THE TEXT OF THE STATUTE, WHICH WOULD INDICATE SUCH A LIMITATION?

>> IF I MAY HAVE ONE MINUTE I'M GOING TO LIVE TO ONE HARD INSURANCE REQUIREMENT OF FINANCIAL INSURANCE REQUIREMENT THERE IS ON RENTAL COMPANIES AND

THAT HIS WORK FROM 324.051,  
ANYBODY WHO HAS ANY CAR THAT'S  
BEEN IN AN ACCIDENT HAS TO  
COMPLY WITH FINANCIAL  
RESPONSIBILITY.

THE COURT CAN TAKE JUDICIAL  
NOTICE THAT ALL CAR RENTAL  
COMPANIES HAVE HAD THEIR CARS  
AND ACCIDENTS BEFORE THIS.  
THEN THEY HAVE TO MEET 324.031,  
WHICH PROVIDES THAT YOU CAN  
EITHER GET THE 10,000-DOLLAR  
POLICY THAT'S REQUIRED UNDER  
324.021 SETUP OR IF YOU'RE NOT A  
NATURAL PERSON, YOU CAN RECEIVE  
VARIOUS OTHER REQUIREMENTS UNDER  
SUBSECTION FOUR, INCLUDING  
REQUIREMENT TO HAVE EXCESS  
COVERAGE.

THAT IS PLAINLY A FINANCIAL  
RESPONSIBILITY REQUIREMENTS FOR  
ANYBODY THAT'S HAD A CAR IN A  
CRASH.

ENTERPRISE HAS CARS IN CRASHES  
AND NEEDED TO COMPLY WITH THOSE  
FINANCIAL RESPONSIBILITIES.

>> I THOUGHT BY SIGNING THAT  
THEY AGREE TO THE CONSENT  
JUDGMENT IS WHAT ENTERPRISE WAS  
AGREEMENT THEY HAVE COMPLIED  
WITH FINANCIAL RESPONSIBILITY  
LAWS OF THE STATE OF FLORIDA.  
THAT DOESN'T TAKE INTO THE OTHER  
STATUTE FOR THE INCREASED  
AMOUNT.

AM I MISINTERPRETING THAT?

>> I UNDERSTAND, BUT I JUST WANT THE COURT TO UNDERSTAND THAT THIS ISSUE IS GOING TO ALTER THE COURT.

THERE'S NOT EVEN \$10,000 REQUIREMENT.

THERE'S NO REQUIREMENT WHATSOEVER.

BECAUSE OF THE LANGUAGE OF 324.021.

BUT THAT'S NOT THIS CASE.

>> WELL, THE COURTS NEED GUIDANCE ON THIS.

THIS COURT NEEDS TO ADDRESS THAT ISSUE.

THANK YOU VERY MUCH.

>> GOOD MORNING.

MAY I PLEASE THE COURT, DAVID BORUCKE ON BEHALF OF ENTERPRISE LEASING COMPANY.

THE KEY ISSUE IS INTENT.

THE CONGRESS INTENDS TO PREEMPT THE FLORIDA STATUTE.

>> CAN WE GO TO A COUPLE OF THINGS PRELIMINARY?

THE OPPOSING COUNSEL SET UP AND SAID SOMETHING ABOUT THE CONSENT JUDGMENT TO THEM.

AM I CORRECT IN ASSUMING THAT ENTERPRISE RECOGNIZES THAT HAS TO COMPLY WITH FINANCIAL RESPONSIBILITY QUOTE, TO REGISTER AND OPERATE VEHICLES IN FLORIDA AND THAT WAS THE PURPOSE OF THAT?

>> IT DOES, YOUR HONOR.



YOUR HONOR.

AND I WAS A STATE CONSENT  
JUDGMENT UNDER 324.021,  
SUBSECTION SEVEN.

SO LET'S SET THAT ASIDE.

AND IT SEEMS AS THOUGH THE REST  
OF THE DISCUSSION WHETHER THIS  
FLORIDA STATUTE THAT WE'RE ALL  
TALKING ABOUT, THE HALF-MILLION  
DOLLAR AMOUNT OF MONEY, WHETHER  
THAT FALLS WITHIN SOMETHING THAT  
GETS FLORIDA OUT OF THIS  
PREEMPTION.

CORRECT?

WE'RE TALKING ABOUT WHERE THE  
STATUTE QUALIFIES FOR THE  
PURPOSES OF THE FEDERAL STATUTE.  
FEDERAL STATUTE IS PRETTY CLEAR  
THAT THE VICARIOUS LIABILITY IS  
NOT GOING TO FLY.

AND THEN HAS AN EXCEPTION.

>> YOUR HONOR, THE FEDERAL  
STATUTE IS VERY CLEAR AND  
METICULOUS.

IN THESE ARGUMENTS THAT THESE  
TWO MEN RAISED IN EVERY FEDERAL  
DISTRICT --

>> I WANT YOU TO TELL ME WHY  
THAT \$500,000 STATUTE IS NOT  
ALSO AN EXCEPTION TO THE FEDERAL  
STATUTE THAT QUALIFIES UNDER  
THAT STATUTE AT LEAST TO THE  
EXTENT OF THE \$500 -- .5 MILLION.

>> THE QUESTION WHETHER 92 FITS  
IN ONE OF THE SAVINGS  
PROVISIONS.

AND I WOULD START THE COURT BY  
LOOKING AT THE ACTUAL LANGUAGE  
OF THE GRAVES AMENDMENT.

IT IS NOT THAT HIS BIGGEST  
FINANCIAL RESPONSIBILITIES.

THE SAVINGS HAVE REDUCED IN THE  
GRAVES AMENDMENT IS MORE  
SPECIFIC.

YOU HAVE B2, B1 SAVES AND  
OPPOSES A NATIONAL  
RESPONSIBILITY FOR INSURANCE  
REQUIREMENT PROVISION FOR  
REGISTERING THE OPERATING  
VEHICLES.

B2 IS EQUALLY SPECIFIC.

B2 STATES FROM LAW THAT IMPOSED  
LIABILITY OR FAILURE TO BE  
FINANCIALLY RESPONSIBLE FOR THE  
INSURANCE THAT IT REQUIRES.

SO THERE ARE NOT TERMS OF  
FINANCIAL RESPONSIBILITY.

WE'RE TALKING ABOUT FINANCIAL  
RESPONSIBILITY REQUIREMENTS HAVE  
TO BE OBLIGATORY AND DEMAND  
INSURANCE.

THE PLAIN LANGUAGE OF SECTION OF  
THE FEDERAL STATUTE IN FLORIDA'S  
324.

YOU REALLY HAVE TWO SENTENCES  
THAT ARE SIGNIFICANT.

THE FIRST SENTENCE IS A CAP ON  
THE COMMON INTEREST  
INSTRUMENTALITY DOCTRINE, WHICH  
I AGREE HAS BEEN IN PLACE SINCE  
1969.

AND LIMITS VICARIOUS LIABILITY

TO 100, 350.

THE SECOND SENTENCE BEGINS WITH  
AN IF THEN.

IT SAYS IF THEY LESSOR RELEASES  
A CAR TO A LESSEE THAT IS  
UNDERINSURED, YOU HAVE THIS  
BENEFICIAL FINANCIAL  
RESPONSIBILITY.

NOW, THIS ISSUE HAS BEEN RAISED  
AS A QUESTION OF FIRST  
IMPRESSION.

IT'S BEEN RAISED IN EVERY --

>> WE UNDERSTAND THAT.

WE WANT TO KNOW WHY DOESN'T  
OPERATE WITHIN THE STATE?

>> LOOKING AT THE PLAIN  
LANGUAGE, IT IS SIMPLY NOT A  
REQUIREMENT.

NOTHING IS REQUIRED AND OF  
COURSE DESCRIBE THAT AS A  
FINANCIAL INSTRUMENT.

IT IS AN OPTION, AN OPPORTUNITY  
TO TO MAKE A COST-BENEFIT  
ANALYSIS, BUT IS NOT REQUIRED  
INSURANCE BY ANY STRETCH OF THE  
IMAGINATION.

NOW, I WOULD ALSO ASK I THINK  
YOU HAVE TO GO THREE SERIES OF  
STEPS.

YOU LOOK AT THE PLAIN LANGUAGE  
OF THE GRAVES AMENDMENT.

>> YOU SAY IT'S NOT A  
REQUIREMENT.

THE LANGUAGE ACTUALLY SAYS THAT  
IF YOU HAVE A LESSEE WHO HAS  
INSURANCE THAT IS LESS THAN

\$500,000, CORRECT?

THEN IT SAYS THE LESSOR, THE RENTAL CAR COMPANY, SHALL BE LIABLE FOR UP TO AN ADDITIONAL \$500,000.

WHAT DOES THAT MEAN?

YOU DON'T HAVE TO HAVE INSURANCE FOR IT, BUT YOU'VE GOT TO PAY IT?

IT'S USING WHAT I CONSIDER TO BE MANDATORY LANGUAGE OF SHALL BE LIABLE.

>> CORRECT.

THE MANDATORY LANGUAGE APPLIES TO THE VICARIOUS LIABILITY THAT'S BEEN IMPOSED IN WHICH IS PREEMPTED UNDER SUBSECTION A.

IF YOU LOOK AT THE BEGINNING OF THE SENTENCE IT BEGINS WITH IF THE LESSOR KNOWS. SO IT IS IF THEN CLAUSE THAT DOESN'T FIT WITHIN FINANCIAL RESPONSIBILITY.

AND YOUR HONOR COME WHEN YOU LOOK AT THE LEGISLATIVE HISTORY OF THIS, FLORIDA'S LAW IS FREQUENTLY REFERENCED BY BOTH PROPONENTS AND OPPONENTS OF THE FEDERAL LEGISLATION IN THEORY WITH THE EDUCATION THIS IS GOING TO BE PREEMPTED.

WHEN YOU LOOK AT THE HISTORY, YOU ALSO SEE A CATEGORY SO STATES TREAT RESPONSIBILITY. IT TARGETED FLORIDA LAW FOR PREEMPTION AMONG THE FLORIDA

STATUTE AND IT IS THE CLOSEST  
LAW BEFORE THE STATUTE AND IT  
SAID THAT IS THAT QUOTE TO  
STATES ENACTED LAWS WHICH LIMIT  
THE VICARIOUS LIABILITY, BUT THE  
LIABILITY STRUCTURE SITE I  
BUBBLE THAN THE PREEXISTING  
FINANCIAL PLAUSIBILITY  
REQUIREMENTS IN THE MINNESOTA  
STATUTE IN FLORIDA STATUTE.

LAST WEEK SUBMITTED TO THE  
SUPPLEMENTAL AUTHORITY THE  
DECISION OF THE MINNESOTA --  
[INAUDIBLE]

THE LAST PORTION OF SUBDIVISION  
THE MINNESOTA STATUTE SAYS QUOTE  
NOTHING IN THIS PARAGRAPH OFFERS  
OR AFFECTS THE OBLIGATIONS OF  
THE OWNER TO COMPLY WITH THE  
REQUIREMENTS OF COMPULSORY  
INSURANCE, END QUOTE.

IF YOU LOOK AT THE FLORIDA  
STATUTE, IT DOES MENTION  
COMPULSIVE INSURANCE.

SO THERE'S A DIFFERENCE BETWEEN  
THE MINNESOTA STATUTE AND THE  
FLORIDA STATUTE.

>> FLORIDA IMPOSES LIABILITY  
THROUGH VICARIOUS LIABILITY.

[INAUDIBLE]

MINNESOTA IS DIFFERENT THAT IT  
IMPOSES THE LIABILITY BY  
STATUTE, NOT ONLY THE COMMON LAW  
AND THAT IS REPRESENTED IN THE  
OTHER STATUTE THAT KEEPS THE  
COMPULSORY INSURANCE IN FLORIDA.

BUT WHAT IS RELEVANT IN THAT  
STATUTE FOR VICARIOUS LIABILITY  
IS PREEMPTIVE.

THE MINNESOTA LAW  
VICARIOUS LIABILITY  
PREEMPTIVE --

>> THE REASON I MENTION THIS IS  
IT SEEMS TO ME LIKE THE FOURTH  
DISTRICT COURT OF APPEALS AND  
YOU HAVE BEEN ARGUING HERE TODAY  
THAT FINANCIAL RESPONSIBILITY  
MEANS NECESSARILY COMPULSORY  
INSURANCE.

BUT WHY DID CONGRESS SAY THAT?

>> I THINK HE DID SO IN TWO  
WAYS.

IT USES THE TERMS NATURAL  
RESPONSIBILITY REQUIREMENTS.

[INAUDIBLE]

THE LANGUAGE OF THE GRAVES  
AMENDMENT IS VERY SPECIFIC.

ALSO IF YOU TAKE THE TERM  
FINANCIAL RESPONSIBILITY, WITH  
ALL RESPECT TO PETITIONERS IT  
DOES NOT MEAN WHAT STATE CHOOSES  
TO ENACT RESPONSIBILITY VERSUS THE  
FEDERAL STATUTE OF THE 50  
STATES.

THEY CAN ATTACH A LABEL TO  
VICARIOUS LIABILITIES.

[INAUDIBLE]

IF YOU LOOK AT FLORIDA LAW, THE  
TERM FINANCIAL RESPONSIBILITY  
HAS THAT AND IS THE CIRCUIT  
STATUE.

FINANCIAL RESPONSIBILITY IS

UBIQUITOUSLY ASSOCIATED MINIMUM  
INSURANCE REQUIREMENT.

AND THERE'S A DIVIDE IN NINE B2  
AND FINANCIAL RESPONSIBILITY.

IT IS THE SAME DISTINCTION  
BETWEEN VICARIOUS LIABILITY AND  
FINANCIAL RESPONSIBILITIES SET  
FORTH IN SUBSECTION B IN THE  
GRAVES AMENDMENT.

>> LET ME MAKE SURE I  
UNDERSTAND.

IT SEEMS TO ME THAT IF CONGRESS  
HAD ANY FINANCIAL  
RESPONSIBILITY, IT COULD HAVE  
EASILY HAVE THAT THE EXCEPTION  
AND STATE FINANCIAL  
RESPONSIBILITY STATUTES REQUIRE  
COMPULSORY INSURANCE.

IT COULD HAVE EASILY SAID THAT.  
THEY DIDN'T.

WHAT THEY BASICALLY SAID WAS THE  
VICARIOUS LIABILITY CASES SAID  
WHAT THE STATES OF FINANCIAL  
RESPONSIBILITIES.

THAT CAN MEAN WHATEVER THE STATE  
DECIDES.

>> I THINK WE'RE LOOKING AT THE  
WRONG PLACE HERE.

I DON'T THINK IT'S THE INTENT OF  
CONGRESS AND CONCORD HAD  
DELEGATED TO THIS LEGISLATURE OF  
THE STATES.

THE INTENT OF THE FLORIDA  
LEGISLATURE AS TO WHAT IT MEANS  
BY FINANCIAL RESPONSIBILITY.

AND IT'S NOT CLEAR.

>> YOUR HONOR, I WOULD SUBMIT IT IS CLEAR BY THE REQUIREMENTS IN B2 AND ALSO B1.

BUT EVEN IF WE JUST LOOK AT THE TERM FINANCIAL RESPONSIBILITY, CONGRESS IS CORRECT THAT IT VERY CLEAR DEFINITION AND VERY CLEAR MEANING AND IS ASSOCIATED WITH MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY.

AND THAT'S TRUE WITH FLORIDA. IT'S BEEN TRUE IN FLORIDA SINCE 1947 WITH FINANCIAL RESPONSIBILITY.

THIS IS A LEGISLATIVE REFORM IN 1925 IT BECOMES TO FLORIDA IN 1947.

FINANCIAL RESPONSIBILITY OFFERS THE SAME TODAY AS IT DID IN 1947.

IT BASICALLY WORKS LIKE THIS.

IT'S TRIGGERED BY AN ACCIDENT ON THE ROAD, POLICE COME, THEY SEND A REPORT TO THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.

THEY DISPENSE THE REGISTRATION OF EVERY OWNER OF THE VEHICLE INVOLVED IN AN ACCIDENT.

UNLESS THE OWNER HAS THE REQUIREMENTS OF SUBSECTION SEVEN, THE OWNER THEN RECEIVES THE REGISTRATION IN THE FINANCIAL --

[INAUDIBLE]

IN ADDITION, IT'S ANOTHER FAILS



TO SATISFY A JUDGMENT,  
REGISTRATION IS SUSPENDED UNTIL  
THE OWNER PAYS THE JUDGMENT IN  
FULL OR SATISFIED THE 102010  
REQUIREMENTS.

THAT IS FLORIDA'S FINANCIAL  
RAISED VISIBILITY LAW IN THE WAY  
IT WORKS IN ALL STATES BY 1970  
WHEN THERE IS A CLEAR  
DEFINITION THAT APPLIES.

I'LL TALK A LITTLE BIT ABOUT B2.

THE PETITIONERS ADOPTED --

>> COULD YOU SPEAK INTO THE  
MICROPHONE?

>> CERTAINLY.

PETITIONERS ARGUED THAT UNLESS  
B2 INCORPORATES INDIRECT  
REQUIREMENTS, IN OTHER WORDS  
FINANCIAL THAT THEY REQUIRED A  
92 IT IS CONFLICT IN THE  
SUBSECTION B1.

AND THAT'S SIMPLY NOT ACCURATE.  
IT IS WRONG FOR A NUMBER OF  
REASONS.

NUMBER ONE, IT HAS THE EFFECT OF  
THE EXCEPTIONS ALLOW THE RULE,  
TO SIGN THE STATUTE.

IT IS CONTRARY TO THE  
LEGISLATIVE INTENT SHOULD  
STATUTE.

IT IS A FLORIDA CENTRIC APPROACH  
TRYING TO INCORPORATE PERHAPS  
FLORIDA'S NOTION TO CLAIM  
RESPONSIBILITY INTO A FEDERAL  
STATUTE WHICH HAS SUPPLIED WITH  
50 STATES AND THE DISTRICT OF

COLUMBIA AND ITS TERRITORIES.  
IF YOU LOOK AT FLORIDA BAR, IT'S  
VERY CLEAR THAT THERE ARE  
INSURANCE REQUIREMENTS THAT FIT  
WITHIN B1 AND THERE ARE  
LIABILITIES AND FAILURE TO MEET  
THOSE REQUIREMENTS THAT COME  
WITHIN B2.

HERE'S AN EXAMPLE.

AS I SAID, YOU HAVE -- LET ME  
PROVIDE THIS ONE.

EVERY OWNER OF THE MOTOR VEHICLE  
HAS TO GO OUT AND OBTAIN \$10,000  
FOR PROTECTION THEN \$10,000 FOR  
PROPERTY DAMAGE LIABILITY.

THOSE ARE INSURANCE  
REQUIREMENTS.

IF THOSE INSURANCE REQUIREMENTS  
LAST, THE OWNER HAS TO REINSTATE  
THEM, PLUS THE OWNER MUST PAY A  
PENALTY OF \$150 FOR THE FIRST  
OFFENSE, \$250 FOR THE  
SECOND OFFENSE, \$500 FOR A THIRD  
OFFENSE.

THOSE ARE LIABILITIES THAT FIT  
WITHIN THE B2 SAVINGS COFFIN TO  
BE CLEAR THAT COMPANIES ARE SET  
FORTH 627, 733 SUBSECTION SEVEN  
TOWARDS 2005.

>> COMMERCIAL VEHICLES ARE NOW  
INCLUDED WITHIN THAT  
REQUIREMENT?

>> YOUR HONOR, THERE ARE  
ADDITIONAL REQUIREMENTS FOR  
COMMERCIAL VEHICLES.

>> YOU'VE GIVEN US AN EXAMPLE.

WE'RE TALKING ABOUT A COMMERCIAL LEASING VEHICLE.

AND SO YOU'VE GIVEN US AN EXAMPLE.

I WAS UNDER THE IMPRESSION THAT THE FIFTH STATUTES EXEMPTED CERTAIN COMMERCIAL VEHICLES.

>> YOUR HONOR, MY UNDERSTANDING IS THAT APPLIES FOR BUSINESS USE FOR A BUSINESS PURPOSE, ANYTHING THAT GETS INTO THE DEBATE ABOUT --

[INAUDIBLE]

I WANT TO MAKE ONE MORE POINT ABOUT CONGRESSIONAL INTENT.

[INAUDIBLE]

THE LEGISLATIVE HISTORY IS VERY CLEAR, BUT I ALSO WANT TO POINT OUT THAT THE IMPACT OF THE GRAVES AMENDMENT IS QUITE MODEST.

WHAT CONGRESS DID IS THEY PERCEIVED THAT IN THE DECISION OF VICARIOUS LIABILITY, WHICH IS IMPOSING LIABILITY BY DEFAULT IS UNFAIR AND CONGRESS DECIDED THAT METHOD OF COMPENSATING DAMAGE FOR BOTH VEHICLES WOULD BE PREEMPTED, LEAVING SEVERAL OTHER METHODS TO THE CONVERSATION.

THE GRAVES AMENDMENT TAKES VICARIOUS LIABILITY IMPOSED UNDER 92 OFF THE STATE OF FLORIDA LEGISLATURE HAS AGREED TO ADDRESS FINANCIAL RESPONSIBILITY REQUIREMENTS

UNDER SUBSECTION SEVEN AND THE  
FACT THEY WERE TO BUILD --

[INAUDIBLE]

WITH ALL DUE RESPECT TO THE  
PETITIONER, YOU CAN THE  
MISCONSTRUED THE STATUTES.

I DON'T THINK THEIR ARGUMENTS  
EVER REALLY MADE THE CIRCUITS OF  
THE CHAPTER 324 FINANCIAL  
RESPONSIBILITY.

FINANCIAL RESPONSIBILITY WAS  
ENACTED IN 1947.

WORK THE SAME WAY TODAY AS IT  
DID THEN.

NINETY-TWO WAS ENACTED IN 99.  
IT'S ONE OF THOSE MODIFICATION  
THINGS.

>> YOUR BASIC PREMISE IS IT'S  
NOT REQUIRED.

IF THAT PROVISION REQUIRING THE  
PURCHASE OF HALF A MILLION  
DOLLARS OF COVERAGE, WE WOULDN'T  
BE HERE TODAY.

>> THAT'S CORRECT.

THAT'S CORRECT.

UNLESS THERE OTHER QUESTIONS, I  
THANK THE COURT FOR THEIR TIME.

>> I WOULD LIKE TO CALL THE  
COURT'S ATTENTION TO SECTION  
324.032, SUBSECTION TWO, WHICH  
DEALS WITH THE MANNER OF PROVING  
FINANCIAL RESPONSIBILITY FOR  
HIGHER PASSENGER TRANSPORTATION  
VEHICLES.

WHAT IT SAYS IN SUBSECTION TWO  
IS AN OWNER OR A LESSEE WHO IS

REQUIRED TO MAINTAIN INSURANCE  
UNDER SECTION 324.0219 B AND  
THEN GOES ON TO SAY TO OPERATE  
VEHICLES, WHENEVER, AND SETS  
FORTH THE MANNER IN WHICH YOU  
PROVE FINANCIAL RESPONSIBILITY  
IN THOSE CIRCUMSTANCES.

I CALL THIS TO YOUR ATTENTION  
BECAUSE I THINK IT IS IMPLICIT  
IN THIS LANGUAGE THAT UNDER  
SECTION 324.021, NINE B AND THEY  
DON'T SEPARATE IT BETWEEN  
SUBSECTION ONE OR TWO, IT IS  
IMPLICIT THAT THERE IS A  
REQUIREMENT TO MAINTAIN  
INSURANCE.

ALBEIT IT IS NOT EXPRESSLY  
STATED, JUSTICE LEWIS, AS YOU  
RECOGNIZED.

BUT THE WHOLE PURPOSE OF THAT  
SUBSECTION B2 IS TO PROVIDE A  
METHOD FOR RENTAL CAR COMPANIES  
TO ENTIRELY ELIMINATE ANY  
VICARIOUS LIABILITY BY REQUIRING  
RENTERS TO HAVE ADEQUATE  
INSURANCE.

THANK YOU.

>> THANK YOU.

THANK YOU ALL OF YOU.

THE COURT WILL NOW BE IN RECESS  
UNTIL TOMORROW MORNING.

>> PLEASE RISE.