

1 IN THE CIRCUIT COURT OF THE  
2 EIGHTEENTH JUDICIAL CIRCUIT  
3 BREVARD COUNTY, FLORIDA

4 CASE NO: 05-2005-CA-008150

5 JO ELLEN POOLE and ROBERT  
6 POOLE, her husband,

7 Plaintiffs,

8 vs.

9 ENTERPRISE LEASING COMPANY  
10 OF ORLANDO,

11 Defendant.

12 \_\_\_\_\_/

13 TRANSCRIPT OF  
14 PROCEEDINGS: DEFENDANT'S MOTION TO DISMISS

15 DATE: January 19, 2006

16 TIME: 1:00 p.m.

17 PLACE: Brevard County Courthouse  
18 2825 Judge Fran Jamieson Way  
19 Viera, Florida

20 BEFORE: THE HONORABLE T. MITCHELL BARLOW

21 REPORTED BY: DEBRA M. ARTER  
22 Registered Diplomat Reporter  
23 Certified Realtime Reporter

24

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1           A P P E A R A N C E S

2  
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24       ALSO PRESENT:

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32           \* \* \* \* \*

1 PROCEEDINGS

2 MR. CIANFROGNA: Your Honor, this is  
3 Andre Mura and this is John Vail, his  
4 partner, they're my associates in the case.

5 MR. VAIL: Not me, Your Honor. Judge,  
6 I'm not appearing.

7 MR. CIANFROGNA: He's not appearing.

8 MR. VAIL: I'm accompanying Andre.

9 THE COURT: All right, very good.

10 MR. VAIL: Thank you.

11 MR. DILL: Judge, I'm Dan Dill, I  
12 represent Enterprise. They brought the  
13 big guns in against me today.

14 MR. DILL: And Your Honor, if I, may  
15 just before we get started, probably make  
16 it easier, I've made copies of everything  
17 that, I believe everything that will that  
18 we'll be referring to during the course of  
19 today's hearing for Your Honor and for  
20 opposing counsel.

21 MR. MURA: Your Honor, we've made  
22 copies of all the cases that were in our  
23 brief.

24 THE COURT: Give me just a moment,  
25 please.

1 MR. MURA: Yes.

2 THE COURT: All right, we have now  
3 before the Court Poole versus Enterprise  
4 Leasing Company of Orlando. The matter  
5 before the Court is a Motion to Dismiss  
6 filed by the Defendant, Enterprise,  
7 alleging that Section 301.06 of Title 49  
8 of the U.S. Code as it was enacted effective  
9 August 10, 2005, creates an insulation on  
10 behalf of the lessors of motor vehicles from  
11 liability.

12 The Plaintiff, to the contrary, appears  
13 to argue that Section 301.06 is one of those  
14 things that in the unique way federal statutes  
15 are structured giveth back with one hand what  
16 the other hand appeared to have takeneth away.

17 And that is, while the statute on its  
18 face appears to exempt the lessors, that it  
19 is not effective in those cases in which  
20 there are financial responsibilities or  
21 insurance standards applicable by state law.  
22 And they further argue that Section 324.021  
23 Sub Section 9 provides that state law and,  
24 thus, the federal law cannot be construed  
25 in a manner such as to create the exemption

1 urged by the defense. Am I substantially  
2 correct?

3 MR. DILL: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. MURA: Yes, sir.

6 THE COURT: You could probably spare me  
7 the placards, but that's okay.

8 MR. DILL: Okay.

9 THE COURT: I have a way of reading  
10 these things before you get here.

11 MR. DILL: And you saved a good five,  
12 ten minutes of what would be a more  
13 long-winded recitation on my part, Your  
14 Honor.

15 Your Honor, it is not disputed in this  
16 matter that the only theory of liability  
17 against Enterprise in this lawsuit is for  
18 vicarious liability pursuant to the dangerous  
19 instrumentality doctrine. The suit in this  
20 matter was filed on or -- on, according to  
21 the Plaintiff's memo, August 10, 2005. That  
22 was the date that U.S.C. 49 301.06 was passed.  
23 Your Honor has obviously already read the  
24 language of that federal law.

25 But what we are relying on, Your Honor,

1 is in general --

2 THE COURT: In other words, you're  
3 saying that they didn't win the race to  
4 the courthouse.

5 MR. DILL: Well, that is exactly  
6 correct, Your Honor. And just for the  
7 record, the language, Judge, reads an  
8 owner of a motor vehicle --

9 THE COURT: You don't have to go  
10 through that, I've read it.

11 MR. DILL: Okay, and I believe it will  
12 be attached or part of the record otherwise.

13 THE COURT: You've handed me a complete  
14 copy, which is one of the copies I had when  
15 I was reading through the materials that were  
16 supplied, you've handed me a complete copy  
17 or what appears to be a complete copy of the  
18 entire text of 301.06.

19 MR. DILL: That is correct, Your Honor.  
20 I believe the Plaintiff's counsel have  
21 accurately set forth really the only way we  
22 could have this disputed. But I think if you  
23 read the totality of the Florida Statute,  
24 specifically 324.021 and the case law that's  
25 interpreted it since then, it makes clear

1 that the section that really prevails or  
2 rules as to today's matter and to this  
3 lawsuit is Sub Section 7.

4 I did enlarge 324.021 and highlighted,  
5 as well, those sections. But --

6 THE COURT: Excuse me just a moment,  
7 I'm going to read Sub Section 7 over again.

8 MR. DILL: Okay.

9 THE COURT: Go ahead. Thank you.

10 MR. DILL: Your Honor, 324.021 is part  
11 of the Tort Reform Act that was passed in  
12 Florida in 1999. And Sub Section 7 provides  
13 the financial responsibility minimal  
14 requirements that are required of rental  
15 car companies, and that's of \$10,000. And  
16 to that extent, it's conceded by Enterprise  
17 that the Plaintiffs have a claim up to,  
18 through that amount.

19 But that is the sub section that rules  
20 today over this lawsuit and the claims arising  
21 on behalf of Ms. Poole.

22 THE COURT: Doesn't 9(B) more  
23 specifically address the question of  
24 lessors?

25 MR. DILL: Your Honor, 9(B)2, the

1 language obviously is in reference to  
2 lessors and more specifically rental car  
3 companies. But what 9(B)2 --

4 THE COURT: I'm talking about 9(B) in  
5 general. 9(B) 1 and 2 have different  
6 applications, depending on whether the  
7 rental term is a year or longer or less  
8 than a year. I don't know which applies  
9 in this case. I'm sure the two of you  
10 would agree that one of the two applies.  
11 Can you tell me that?

12 MR. DILL: Well, I don't think that  
13 9(B) applies generally to this matter at  
14 all. And here's why. When the Tort  
15 Reform --

16 THE COURT: All right, let me rephrase  
17 it. Presumably this was a rental car.

18 MR. DILL: It was, Your Honor.

19 THE COURT: And -- or a leased car, one  
20 of the two. Was it rented under, or leased  
21 under a contract that was for greater  
22 than -- a year or greater or less than a  
23 year?

24 MR. DILL: The latter.

25 THE COURT: The latter, less than a

1 year. So then my question is why doesn't  
2 9(B)2 apply?

3 MR. DILL: 9(B)2 does not apply because  
4 this statute, the tort reform in general,  
5 324.021, was passed, and that section  
6 presupposes vicarious liability. When you  
7 read the case law that interprets 9(B)2 and  
8 9 in general, that sub section, it  
9 presupposes vicarious liability.

10 The problem as of today and as of  
11 August 10, 2005, is that there is no more  
12 vicarious liability in the State of Florida.  
13 If you look at a couple of the cases that  
14 I've provided Your Honor, specifically  
15 Sontay, S O N T A Y, v. Avis Rent-a-Car,  
16 at 872 So2d 316, and Enterprise Leasing v.  
17 Hughes, that's --

18 THE COURT: Just give me a moment,  
19 if you would.

20 MR. DILL: I'm just going to cite it  
21 for the record, Your Honor.

22 THE COURT: Well, if you're going to  
23 cite it I'm going to read it.

24 MR. DILL: I'll forget if I don't do  
25 it for the court reporter now.

1 THE COURT: Okay, I've got Sontay here,  
2 which is a 4th DCA case. Actually, one  
3 of the things I'm looking for here is  
4 whether any of these cases arose out of the  
5 federal system and, if so, was it subsequent  
6 to the enactment of the statute or not. And  
7 apparently, that's not the case since it was  
8 a state court case.

9 And you were also looking at which one?

10 MR. DILL: I'm sorry, Your Honor,  
11 Enterprise Leasing v. Hughes.

12 THE COURT: Hughes, that's right, that's  
13 also a 1st DCA case. So it's -- they are  
14 both state court cases.

15 MR. DILL: Yes, Your Honor. And I have  
16 not personally found any Federal Court cases  
17 interpreting the federal statute that we're  
18 here arguing about today.

19 But when we read these cases on behalf  
20 of Enterprise in conjunction with 9(B)2 --

21 THE COURT: Give me just a second. All  
22 right, Sontay which appears at 872 So2d 316  
23 appears to address the constitutional  
24 questions of whether the language of 9(B)2  
25 constituted a denial of the right of access

1 to the Courts, whether it deprived the  
2 Plaintiff of the benefit of a jury trial  
3 and other similar constitutional issues  
4 involving access, whether it was  
5 discriminatory, those types of things.  
6 And the Fourth District held that, indeed,  
7 it did not and characterized the statute  
8 as a cap on vicarious liability of innocent  
9 short-term vehicle lessors. Okay. Just  
10 want to be sure I understand it.

11 Now, Hughes, on the other hand, ruled  
12 on some of the same subjects but also  
13 attacked the single subject rule for the  
14 validity of the state statute under state  
15 constitutional provisions. And the Court  
16 reached the same results, holding that  
17 there was no constitutional infirmity.

18 Hang on just a moment, let me be sure  
19 that's right. Yeah. All right, sir, go  
20 ahead.

21 MR. DILL: And Your Honor, as you've  
22 accurately pointed out and what we're  
23 relying on is these cases interpreting  
24 9(B)2, and the constitutionality of that  
25 statute in general make it very clear that

1 the Courts interpret that statute to place  
2 a cap on the amount of damages for the  
3 vicarious liability of the lessor. And that  
4 really is what 9(B)2 does in this case.

5 THE COURT: Hang on just a moment.  
6 Doesn't it do more than that?

7 MR. DILL: No, sir.

8 THE COURT: What about the provision in  
9 9(B)2 that -- well, first of all, it gets to  
10 the cap in an interesting way. And what it  
11 first starts out saying is that the lessor  
12 is deemed to be an owner only after the  
13 amount of the cap.

14 And then it goes on to say that if the  
15 lessee or operator is uninsured or has his  
16 own limits less than 500,000 combined property  
17 damage and bodily injury liability insurance,  
18 then the lessor is additionally liable for up  
19 to an additional \$500,000 in economic damages  
20 only arising out of the use of the motor  
21 vehicle. Isn't that last part financial  
22 responsibility?

23 MR. DILL: Not applicable, Your Honor,  
24 to the extent that it would prevail in this  
25 case or even apply to this case. And

1 respectfully, I must point out that the more  
2 pertinent language was where you did start  
3 reading, starting in the second line of that  
4 section, shall be deemed the owner of the  
5 motor vehicle for the purpose of determining  
6 liability for the operation of the vehicle.

7 Not only does that presuppose vicarious  
8 liability, it actually sets forth that it is  
9 vicarious liability by the very language in  
10 that section.

11 And the problem as it applies today is  
12 there is no more vicarious liability existing  
13 in Florida. Because the federal statute has  
14 abolished it in the State of Florida.

15 THE COURT: Hang on just a moment.

16 I'm not sure. Part of the reason  
17 that I read the first portion of Sub Section  
18 9(B)2 was that the state statute says that  
19 shall be deemed to be the owner. And the  
20 federal statute says -- doesn't talk about  
21 whether they're deemed to be the owner or  
22 not, it says the owner shall not be liable.

23 Isn't, in fact, the plain reading of  
24 9(B)2 a financial responsibility requirement?  
25 After all, it's in Chapter 324, which is the

1 financial responsibility chapter. 324.011  
2 talks about the intent being, providing for  
3 financial responsibility. And the federal  
4 statute in Sub Section B says nothing in  
5 this section supersedes the state statute  
6 imposing financial responsibility -- financial  
7 responsibility, which is exactly what 9(B)2  
8 appears to do, isn't that right?

9 MR. DILL: No, Your Honor, Sub Section  
10 7, without question, does that. But I guess,  
11 respectfully, the problem we have here is  
12 that when Your Honor focuses on the words  
13 "deemed to be the owner," you can't just  
14 look at those words, because contextually  
15 the entire sentence is what rules today  
16 and it says shall be deemed the owner of  
17 the motor vehicle for the purpose of  
18 determining liability.

19 That, by definition, is vicarious  
20 liability. And there is no more vicarious  
21 liability due to the federal law. And  
22 that's the problem with trying to apply  
23 this sub section which simply provides  
24 caps.

25 THE COURT: This can't be the first

1 time this has been argued. This can't be  
2 the first time this has been argued.

3 MR. DILL: Your Honor, on my end, this  
4 is the second time and we didn't get nearly  
5 this far into the substantive arguments and  
6 we didn't --

7 THE COURT: You mean no other car rental  
8 company whatsoever has ever argued this in  
9 the State of Florida.

10 MR. DILL: Trust me, Your Honor, I did  
11 not want to be the first one arguing this.  
12 I've searched far and wide for other Orders.

13 THE COURT: You mean this Court is  
14 blessed among Courts.

15 MR. DILL: You're Number Two, but  
16 you're the first one really getting into  
17 the financial responsibility statute in  
18 any depth at all.

19 And Your Honor, one of the things that  
20 I'd ask you to look at that's contained in  
21 the packet that I provided you and Counsel  
22 is the Certificate of Self Insurance  
23 applicable to the vehicle that's in question  
24 here that was involved in the accident. And  
25 this Certificate of Self Insurance for

1 Enterprise Leasing Company of Orlando does  
2 set forth and is consistent with the financial  
3 responsibility requirements it had on it  
4 at the time and which it did. And it sets  
5 forth, the Certificate provides limits of  
6 liability insurance \$10,000/\$20,000.

7 And it cites Chapter 324.021  
8 Sub Section 7. And I think that as time  
9 goes on and this motion is argued by other  
10 companies, you're going to find that most  
11 or all of the cars in question are going  
12 to have a similar Certificate of Self  
13 Insurance. And the reason why the industry  
14 has relied upon that sub section is because  
15 that really is the sub section that was  
16 intended to apply as the minimal -- minimum  
17 financial responsibility for a car just like  
18 this one.

19 Your Honor, if I may --

20 THE COURT: Go ahead.

21 MR. DILL: -- this speaks to the issue  
22 that we're discussing right now. Another one  
23 of the items I've provided you and Counsel  
24 was a packet that included reports, or the  
25 House report from the committee that this

1 Bill went through. And I tabbed the language  
2 from Congressman Graves, when they were in  
3 the process of drafting and moving this bill  
4 to be passed.

5 On Page Two of the packet I gave you, on  
6 Paragraph Number Ten --

7 THE COURT: All right, give me just a  
8 moment, please.

9 All right, go ahead. Let me look at the  
10 second tab before you proceed.

11 MR. DILL: And I apologize, I don't know  
12 that anything pertinent for -- I think the  
13 second tab really is, it's tabbed because it  
14 has the language of the Bill written in, and  
15 that's all it really is.

16 But clearly, when you read the comments  
17 from Congressman Graves, it's enlightening  
18 in terms of what the rationale was for this  
19 Bill, when it was in the process of being  
20 passed and so far as the intent was to limit  
21 liability under state law for an owner of a  
22 motor vehicle or their affiliate who's  
23 engaged in the business of renting and  
24 leasing motor vehicles provided, as there  
25 is in this case, there's no negligence or

1 criminal wrongdoing on the part of the  
2 motor vehicle owner or affiliate.

3 And again, if you look at the Certificate  
4 of Self Insurance applicable to the vehicle in  
5 question here, Your Honor, what you do have is  
6 compliance with the financial responsibility  
7 statute, the section that would be applicable  
8 in this case, that being Sub Section 7.

9 THE COURT: All right. Anything  
10 further?

11 MR. DILL: Your Honor, I don't know if  
12 retroactive application of this statute is  
13 even in dispute or being argued by  
14 Plaintiff's counsel. And I'm getting --

15 THE COURT: If the suit were filed on  
16 the effective date of the statute, why would  
17 we have any question of retroactivity?

18 MR. DILL: I'm glad you said that.  
19 Because you're absolutely correct, there  
20 wouldn't be. I said this is the second  
21 time I've argued this. It didn't get to  
22 the financial responsibility arguments in  
23 any substance, because the last time --  
24 the only other time it's been ruled on in  
25 the State of Florida, to my knowledge, it

1 was ruled on because the Judge felt that  
2 the Federal Government certainly didn't  
3 mean to have retroactive application. And  
4 obviously, Sub Section C of the federal  
5 law --

6 THE COURT: Two cornerstones of  
7 statutory construction would appear to be  
8 applicable. One is that statutes generally  
9 have prospective operation only, unless the  
10 statute is very clear that it has  
11 retrospective application.

12 Secondly, when you are talking about  
13 remedial provisions, I mean things that  
14 are in effect procedural, as contrasted to  
15 substantive it's almost always prospective  
16 in operation; but the former is much more  
17 important in this case. I haven't heard  
18 their argument, but I don't know whether  
19 they would raise that

20 Do you have any argument dealing with  
21 retroactive application of this statute?

22 MR. CIANFROGNA: He doesn't, I might.

23 MR. MURA: No, Your Honor, we're not  
24 raising that. To my knowledge.

25 THE COURT: Are you?

1 MR. CIANFROGNA: Well, I really -- these  
2 are the constitutional experts, but I think  
3 that, and this has been my position, I hope  
4 you don't get angry with me --

5 THE COURT: You think it's date of the  
6 accident rather than date of the filing.

7 MR. CIANFROGNA: Right, date of the  
8 incident.

9 THE COURT: That's what I meant.

10 MR. CIANFROGNA: That's what I'm saying.  
11 I'm saying if this thing happened three years  
12 before and now they passed a statute that  
13 says you don't have a claim for something  
14 that happened three years before the statute  
15 was in, I mean, that's just my position.

16 MR. DILL: Your Honor, if I may --

17 THE COURT: Well, here may be the  
18 distinction on that point. Unless they  
19 are talking about a total exemption from  
20 liability, and here's where they may be  
21 hoisted on their own petard, by the way,  
22 unless they are talking about a total  
23 exemption from liability, they have  
24 affected only the remedy, they have  
25 affected the amount that's recoverable

1 under the caps, not whether they can recover  
2 at all.

3 To that extent, the statutes have to  
4 have prospective operation because you're  
5 affecting the remedy rather than the right.  
6 That's what I'm talking about. Usually, in  
7 almost every case that I've ever studied,  
8 those statutes that affect only the remedy  
9 have prospective operation, not retrospective  
10 operation. Okay?

11 MR. CIANFROGNA: I agree with that.

12 THE COURT: Okay. That would -- so if  
13 this only affects the remedy, i.e., a cap,  
14 and does not extinguish the liability, then  
15 it doesn't have retrospective operation and  
16 the Plaintiff is stuck with whatever limits  
17 apply under the current state statute.

18 MR. CIANFROGNA: I agree with that.

19 THE COURT: Okay, at least we fenced  
20 off the area of argument. On the other hand,  
21 if I held that this indeed was a complete  
22 extinguishment of the right to sue, then in  
23 fact we would be arguing whether it affected  
24 the right or the remedy and then I'd get into  
25 that argument about whether it could have

1 divested some kind of a vested right or  
2 something of that nature that would cause  
3 it to have retrospective application back  
4 to the date of the incident.

5 MR. CIANFROGNA: Right.

6 THE COURT: So I don't have to face that  
7 argument, yet.

8 MR. CIANFROGNA: Okay.

9 MR. DILL: And Your Honor, just briefly,  
10 I think it's important since Mr. Cianfrogna's  
11 made that point to drive the point home,  
12 because there is a U.S. Supreme Court case  
13 from 1994 that really rules today on that  
14 retroactive application point. That's  
15 Landgraft v. USI Film Products, that has  
16 been enclosed as well, that's 511 U.S. 44.

17 THE COURT: Give me just a moment.  
18 Well, let's hold that argument in abeyance  
19 because I may never have to reach that  
20 argument. Let's take this apart in its  
21 pieces.

22 MR. DILL: Yes, sir.

23 THE COURT: If I find that this is a  
24 financial, in effect a financial  
25 responsibility law, or that the state statute

1 is, in fact, a financial responsibility law  
2 referred to in Section B of the federal  
3 statute, Sub Section B of the federal  
4 statute, then we never get there.

5 MR. DILL: Yes, sir.

6 THE COURT: Okay.

7 MR. DILL: With that, Your Honor, I  
8 think I'll defer to opposing counsel and  
9 save a little summation for after that, I  
10 guess.

11 THE COURT: Okay, give me just a moment.

12 Let me before we get into any expensive  
13 constitutional questions ask that you limit  
14 your arguments, at least for now. And the  
15 reason I'm asking that is that if I can  
16 resolve this case based on whether or -- or  
17 based on a finding that this statute is, in  
18 fact, a financial responsibility statute, I  
19 never have to reach the constitutional  
20 questions.

21 And clearly, one of the cornerstones  
22 of statutory construction is you don't  
23 reach the constitutional questions if you  
24 don't have to. You rule on the narrowest  
25 possible ground.

1       And I recognize how expansive the  
2 question can get when you're talking about  
3 all the various constitutional aspects of  
4 this, some of which have been dealt with by  
5 the state courts and some of which have not.  
6 And I recognize -- I've read memos. You  
7 folks haven't practiced in front of me,  
8 with the exception of Mr. Cianfrogna, and  
9 I think most of the local lawyers will tell  
10 you that I'm generally conversant with the  
11 subject matter before you ever get here.

12       Okay. Go ahead.

13       MR. MURA: Thank you, Your Honor.  
14 My name is Andre Mura for the Plaintiffs.  
15 If I may first present you with the cases  
16 that were listed in the brief. And we've  
17 presented opposing counsel with those cases,  
18 as well.

19       THE COURT: Is that one of those things  
20 where if I have insomnia it's going to cure  
21 my problem?

22       MR. MURA: Thank you, Your Honor.

23       THE COURT: Let the record reflect that  
24 he's handed me a stack of cases about four  
25 inches thick, and I'm clearly going to be

1 able to speed read all of them in the next  
2 ten minutes.

3 MR. MURA: Your Honor, the practical  
4 concern that Congress had when it enacted  
5 this federal statute was that certain states  
6 imposed unlimited liability for these types  
7 of accidents. But Congress was also  
8 concerned and also showed deference to  
9 state legislatures and state courts that  
10 had developed financial responsibility  
11 laws.

12 THE COURT: Where do I determine that?

13 MR. MURA: From the text, Your Honor.  
14 Sub Section A -- the text of the federal  
15 statute. If I may, Your Honor, Sub Section  
16 A of that statute generally insulates motor  
17 vehicle lessors from liability.

18 But Sub Section B of that statute makes  
19 it plain that financial responsibility laws  
20 that impose liability are preserved.

21 Now --

22 THE COURT: That's what I said when you  
23 walked in here, that what the Federal  
24 Government taketh away what one hand they  
25 giveth back with the other.

1 MR. MURA: Yes.

2 THE COURT: Contrary to the way statutes  
3 are usually drafted where they giveth first  
4 and then taketh away kind of thing. Go  
5 ahead.

6 MR. MURA: Yes, and if you read that  
7 statute, if you look at what Congress has  
8 accepted from the larger Sub Section A,  
9 then you have to ask yourself what's left  
10 of Sub Section A, what does Sub Section A  
11 apply to. And those states that don't have  
12 financial responsibility laws were those  
13 states that imposed unlimited liability.  
14 And Congress was not willing to tolerate  
15 legal regimes where lessors were subject to  
16 unlimited liability.

17 But they also were cognizant of the  
18 fact that states have developed financial  
19 responsibility laws and states have a  
20 relationship in developing their own tort  
21 law and in assuring --

22 THE COURT: Following up with this  
23 argument, why is this a financial  
24 responsibility statute?

25 MR. MURA: First, Your Honor, I'd like

1 to point out in the Motion to Dismiss it says  
2 that Enterprise shall have no liability, and  
3 now Enterprise is in a position, it seems,  
4 subject to Paragraph 7 of the Florida state  
5 responsibility --

6 THE COURT: Which is a 1020 liability.

7 MR. MURA: Yes. Now, that liability,  
8 it's our position, fits within B(1) of the  
9 federal statute. The federal statute allows  
10 the imposition of financial responsibility or  
11 insurance standards for the privilege of  
12 registering or operating a motor vehicle.

13 THE COURT: Why isn't Sub Section 9(B)2  
14 in complete derogation of Sub Section 7 in  
15 the sense that when you read a statute as a  
16 cohesive whole and there is a general  
17 pronouncement and a specific pronouncement  
18 in the other, the specific overtakes the  
19 general pronouncement to the extent there's  
20 inconsistencies, and why doesn't 9(B)2  
21 govern short-term leases or rentals and  
22 Sub Section 7 do everything else?

23 MR. MURA: Yes, it's our position that  
24 both bind, Sub Section 9(B)2 does govern  
25 short-term leases in this instance and that's

1 a financial responsibility scheme under  
2 Florida law.

3 It engages the lessor for the purposes  
4 of assuring financial responsibility, of  
5 assuring that there are going to be funds  
6 available for those persons who are injured,  
7 which fits within the purpose of what a  
8 financial responsibility law is under the  
9 Florida Statute 324.0 11. And it engages  
10 the lessor in that sense.

11 And by engaging the lessor in that  
12 sense, Congress is respecting that states  
13 have financial responsibility, states have  
14 obligations to their citizens to ensure  
15 compensation.

16 Now, Florida has chosen a carrot and  
17 not a stick in that it allows Enterprise  
18 to choose whether it's going to take out  
19 insurance up to those amounts. So Florida  
20 companies can assure -- can be assured to  
21 know what their limits of liability are  
22 under the statute. So they can take out  
23 insurance and insure themselves, no personal  
24 liability, they won't have to reach inside  
25 their own pockets on an individual case

1 basis.

2 And it also assures that those injured  
3 persons who are injured in these types of  
4 accidents, the Jo Ellen Pooles of the world,  
5 have some sort of compensation available for  
6 them. This is a recognition that lessors  
7 are going to be, for the most part, more  
8 solvent than individual lessees.

9 THE COURT: They don't have to take out  
10 insurance, do they?

11 MR. MURA: No, Your Honor, they're  
12 not --

13 THE COURT: They can be self insured  
14 under the statute, can't they?

15 MR. MURA: Yes, Your Honor. They can  
16 be self insured, the Florida scheme is  
17 permissive in that it allows companies like  
18 Enterprise to choose what path it's going to  
19 choose, whether it wants to self insure.

20 THE COURT: And if they happen to rent  
21 to some poor slob that doesn't have up to  
22 500,000 in property damage and bodily limit  
23 liability, they're on the hook for an  
24 additional 500 K for economic damages only,  
25 isn't that what the statute says?

1 MR. MURA: Yes.

2 THE COURT: I thought I understood.

3 MR. MURA: It's a limited liability,  
4 it's not an unlimited liability. The  
5 liability is limited there. So there's no  
6 question the Florida statute falls within  
7 the guidelines of the federal statute, which  
8 preserves a position of liability for failing  
9 to meet financial responsibility laws of the  
10 state.

11 And again, Your Honor, in addition to  
12 what was driving Congress which was concern  
13 with Federalism issues, it didn't want to  
14 displace --

15 THE COURT: I don't know that I can take  
16 that giant leap of faith that Congress was  
17 concerned with Federalism issues or not on  
18 this record.

19 MR. MURA: Okay.

20 THE COURT: I mean, on a Motion to  
21 Dismiss I don't get there. Because you  
22 don't submit me committee reports ad nauseam  
23 that express some Senator's grave concern for  
24 Federalism issues or not.

25 MR. MURA: Sure.

1 THE COURT: And I suspect that those  
2 grave concerns would differ depending on  
3 which side of the aisle they came from.

4 MR. MURA: Sure, Your Honor. My point  
5 is this Court in reading a federal statute  
6 that seeks to preempt a state law concerned  
7 with the presumption of preemption which has  
8 its derivation from areas in which states  
9 have traditionally exercised, clearly they  
10 have exercised the role in providing  
11 responsibilities in their state. So when  
12 this Court reads the statute, it must  
13 resolve ambiguities in favor of preserving  
14 those state laws.

15 If it's a presumption against preemption  
16 unless Congress speaks clearly and manifestly  
17 against what its seeking to preempt, the  
18 presumption against preemption works in favor  
19 of preservation of state laws. But here,  
20 there's no question against whether failing  
21 to meet the financial responsibility of the  
22 state is still an imposition of liability.

23 THE COURT: Isn't it a little bit  
24 different, aren't the preemption arguments  
25 essentially that the higher unit of

1 Government, whether it's the state preempting  
2 local legislation, you know, ordinances,  
3 county ordinances or municipal ordinances,  
4 or Congress, the federal statute preempting  
5 state, isn't that really based on the  
6 legislative intent, as evident from the  
7 statute on whether they intended to preempt  
8 the field?

9 MR. MURA: Yes, and the legislative  
10 intent is clear from the statute itself.

11 THE COURT: Actually, this is a very  
12 interesting case in the sense that it may  
13 well be a case of first impression in terms  
14 of the decision-making process. Tell me  
15 what the other trial court case you're aware  
16 of turned on.

17 MR. DILL: It turned on the retroactive  
18 application. And I brought the transcript  
19 with me and it -- I wasn't sure when I walked  
20 out of the courtroom that it could possibly  
21 have been ruled the way it was. But I read  
22 it and it was, and it was just -- it was  
23 relying on retroactive application.

24 Essentially, it was just disregarding  
25 Sub Section C of the federal law.

1 THE COURT: I'm going to be a bit more  
2 bold than that. This Court is going to find  
3 that 324.021 Sub Section 9(B)2 is indeed a  
4 financial responsibility law. It is a  
5 financial responsibility law more specific  
6 than Sub Section 7 of the same statute and,  
7 therefore, applies specifically in all cases  
8 in which there is a rental or lease of a  
9 motor vehicle for a period of less than a  
10 year, as we have here.

11 Because it is a financial responsibility  
12 law -- before I get to that point. I also  
13 find it is consistent with the purpose of the  
14 Chapter announced in 324.011 and because it  
15 is, therefore, a state financial responsibility  
16 law, I am going to find that it falls squarely  
17 within the exception created by 49 U.S.C.  
18 301.06(B), which does not -- which specifically  
19 provides that the federal statute, or at least  
20 Paragraph A does not supersede state law where  
21 there are financial responsibility questions,  
22 or issues that are resolved by the state law.

23 It is the exception that's contemplated  
24 by the federal statute and, therefore, it is  
25 9(B)2 and not the federal statute which

1 applies to this case. The motion will be  
2 denied.

3 MR. MURA: Thank you, Your Honor.

4 (The proceedings were concluded at 2:00 p.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA )

) SS:

3 COUNTY OF BREVARD )

4 I, DEBRA M. ARTER, Registered Diplomate Reporter

5 and Certified Realtime Reporter, certify that I was

6 authorized to and did stenographically report the

7 foregoing proceedings; and that the transcript, pages

8 1 - 34, is a true and complete record of my stenographic

9 notes.

10 I FURTHER CERTIFY that I am not a relative,

11 employee, attorney or counsel of any of the parties,

12 nor am I a relative or employee of any of the parties'

13 attorney or counsel connected with the action, nor am I

14 financially interested in the event of this cause.

15 DATED this 20th day of January, 2006.

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