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Federal Law Held to Subvert State Police Power

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ALBANY - A federal law barring New York from imposing vicarious liability on those who lease or rent motor vehicles intrudes on state powers and cannot be enforced, a Queens judge has held.

Supreme Court Justice Thomas V. Polizzi's holding in *Graham v. Dunkley*, 6123/2006, apparently reopens a window that auto companies believed had been slammed shut by the federal Transportation Equity Act of 2005.

The decision will be published Tuesday.

The act sought to pre-empt state laws, like New York's, that imposed liability vicariously on arms-length owners of motor vehicles such as leasing and rental companies. But Justice Polizzi ([See Profile](#)) found the federal law, instead of trumping the state statute, is itself trumped by New York law.

The judge said the federal law, widely hailed by tort reform advocates, "subverts the inherent authority of the New York State Legislature to legislate according to the collective will of its citizens, and it abrogates a long-standing substantial law of torts in New York State."

He said if the Legislature wishes to eliminate vicarious liability in auto leasing, it is free to do so. But he said New York's law cannot be pre-empted by Congress. Thus, he rejected a motion by defendants to dismiss the lawsuit.

Under a horse-and-buggy era state law, Nissan Infiniti, as the owner of the vehicle in the instant case, could be held vicariously liable even though it had nothing to do with the accident. The law has been assailed for years by auto companies who claimed it was unfair to hold them responsible for someone else's negligence. The 2005 federal act expressly sought to overrun state vicarious liability laws like New York's.

Ironically, the act came as a relief to many lawmakers, who had long sought to reconcile an 80-plus-year-old legal principle with modern realities. Although there was widespread support in the Legislature to eliminate vicarious liability -- and quite possibly majority support in both houses -- the

matter was repeatedly bottled in committee. Justice Polizzi's decision apparently sends the issue back to Albany.

Graham v. Dunkley arose out of an accident in Queens. Court records show that the plaintiff, Sharon Graham, was injured in an accident near Linden Boulevard and 195th Street. The operator of the other vehicle, Rayon S. Dunkley, was driving a leased vehicle owned by Nissan Infiniti.

Ms. Graham attempted to sue under the vicarious liability provision, claiming it survived federal pre-emption. Justice Polizzi agreed, describing the Transportation Equity Act as "an unconstitutional exercise of congressional authority" under the U.S. Constitution's commerce clause.

Justice Polizzi said that in order to find, as the defendants claim, that New York's law substantially impacts interstate commerce, and is therefore ripe for congressional pre-emption, he would have to "agree with the proposition that every civil lawsuit that results in a monetary judgment, and involves an insured, has a substantial effect on interstate commerce." That, he was not prepared to do.

"The issue of supremacy of congressional legislation over New York State law is not one to be simply assumed, for Congress has only those powers to legislate that are conferred on it by the United States Constitution," Justice Polizzi wrote. "The substantive law of torts is not to be faintly acquiesced to legislation by Congress, particularly when there is no preponderance of constitutional authority to support such a conclusion."

Congressional Intrusion

Justice Polizzi held that when the Legislature adopted the vicarious liability provision in the 1920s it drew from common law and "performed a lawful exercise of its inherent police power, which allows the states' great latitude in protecting the general public welfare, including the protection of life and limb and the economic welfare of the people generally." He said Congress may not intrude where the state law is "recognized as integral to New York State's substantive law of torts."

Assemblyman Ronald Canestrari, an Albany County Democrat who was a major proponent of eliminating vicarious liability in auto leasing, said he was "shocked by the decision" and hopeful that it will be overturned on appeal. If not, Mr. Canestrari said, he will push for legislative action.

"There is the appeal process, and maybe sanity will prevail," Mr. Canestrari said yesterday. "But I still believe strongly in the issue, and we may be revisiting it [if Justice Polizzi's ruling stands]."

The ruling was immediately hailed by the New York State Trial Lawyers Association, which had successfully blocked state efforts to eliminate vicarious liability only to be blind-sided by Congress.

"In essence, Justice Polizzi said what others were afraid to say: that Congress blatantly invaded an area of legal authority reserved to the states by the Tenth Amendment," said Joseph P. Awad, president of the trial lawyers group. "His decision creates a rare 'emperor has no clothes' moment."

The trial lawyers have noted that while the federal law shielded auto companies from vicarious liability, it did nothing for an individual car owner. Individuals who permit someone else to drive their car remained vicariously liable for any damage they caused.

Additionally, consumer groups argued that the auto companies showed no interest in mitigating their own exposure by screening those to whom they leased vehicles. Consumer activists have said the auto dealers had adopted a "see no evil" approach and were eager to lease to anyone with money and

a driver's license, no matter how poor their driving record.

Scott Zlotolow of Westbury, Long Island, represents the plaintiff.

"The states have a right to regulate their own policy relative to what goes on on their roads," Mr. Zlotolow said. "I think the message here for the most part is that the federal transportation act is unconstitutional because it conflicts with the New York State law in that it was an improvident exercise of authority by the federal government over the state."

Nissan Infiniti counsel Peninna H. Oren of London Fischer in Manhattan was not immediately available for comment.

Justice Polizzi's decision, dated Sept. 11, was his last. He retired two days later, according to his chambers.

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