

No. 26-

IN THE
Supreme Court of the United States

SECOND CHILD, *et al.*,

Petitioners,

v.

EDGE AUTO, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER THE NEW YORK COURT OF APPEALS WRONGLY APPLIED THE GRAVES AMENDMENT TO VEHICLE AND TRAFFIC LAW § 370.
2. WHETHER THE NEW YORK COURT OF APPEALS INCORRECTLY FOUND THAT THE MCCARRAN FERGUSON ACT IS NOT TRIGGERED BY THE GRAVES AMENDMENT'S PURPORTED PREEMPTIVE EFFECT OVER THE PRIMARY MINIMUM INSURANCE MANDATES OF VEHICLE AND TRAFFIC LAW § 370.

PARTIES TO THE PROCEEDING

The following are the parties to the proceeding in the New York Supreme Court, Bronx County, wherein appeal was made to the New York Court of Appeals and whose judgment is sought to be reviewed:

- Droga 5 Studios, LLC d/b/a Second Child, improperly pled as Second Child, Petitioner before this Court and the New York Court of Appeals; and
- Daniel Jaffe, Petitioner before this Court and the New York Court of Appeals; and
- Edge Auto, Inc., Respondent before this Court and the New York Court of Appeals; and
- Maya Assurance Company, Respondent before this Court and the New York Court of Appeals.

RULE 14.1(B)(I)

Droga5, LLC d/b/a Second Child (“Second Child”), Edge Auto, Inc., and Maya Assurance Company are not publicly traded companies and therefore, do not have a stock ticker symbol. However, the parent company of Droga5, LLC, Accenture PLC, is a publicly traded company and maintains the following stock ticker symbol: ACN.

RULE 29.6 STATEMENT

Second Child states that its parent company is Accenture, PLC. Second Child has no affiliates or subsidiaries. Accenture, PLC is a publicly traded company and owns 49% of Droga5, LLC.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii);

- *Second Child v. Edge Auto, Inc.*, APL-2025-00112. Court of Appeals of New York. Judgment entered April 23, 2026..
- *Second Child v Edge Auto, Inc.*, 2023-05393. Supreme Court of the State of New York, Appellate Division, First Judicial Department. Judgment entered March 13, 2025.
- *Second Child. v. Edge Auto Inc.*, 804034/2023E. Supreme Court of New York, Bronx County. Judgment entered September 18, 2023.
- *Second Child. v. Edge Auto Inc.*, 804034/2023E. Supreme Court of New York, Bronx County. Judgment entered July 16, 2024.

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Petitioners’ Second Child and Daniel Jaffe (“Petitioners”) respectfully petition for a writ of certiorari to review the judgment of the New York Court of Appeals in case No.: APL-2025-00112, entered on April 23, 2026, reargument denied, June 23, 2026 (Mo. No. 2026-377).

OPINIONS BELOW

The Opinion of the New York Court of Appeals (APL-2025-00112) has not been finalized for publication but can be located at *Second Child v. Edge Auto, Inc.*, 2026 N.Y. LEXIS 556 (April 23, 2026). Petition Appendix (“Pet. App.”) 1a-34a.

The Opinion of the Supreme Court of the State of New York, Appellate Division, First Judicial Department is reported at 236 A.D.3d 499 (1st Dept 2025). Pet. App. 35a-40a.

The Opinions of the Supreme Court of the State of New York, Bronx County are not reported but can be located at *Second Child v. Edge Auto Inc.*, 2024 N.Y. Misc. LEXIS 12009 (Bx. County Sup. Ct. July 16, 2024); *Second Child v. Edge Auto Inc.*, 2023 N.Y. Misc. LEXIS 16009 (Bx. County Sup. Ct. Sept. 18, 2023). Pet. App. 41a-68a.

JURISDICTION

The judgment of the New York Court of Appeals was entered on April 23, 2026. The Motion for Reargument was denied on June 23, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS

The relevant statutory provisions, 15 U.S.C. § 1012, 49 U.S.C. § 30106, NY CLS Ins § 3420, and NY CLS Veh & Tr § 370, appear in Petitioners' Appendix ("App") H 77a-83a, pursuant to and in accordance with this Court's Rule 14.1(f).

STATEMENT OF THE CASE

This case involves an insurance coverage dispute between a commercial motor vehicle rental agency and its customer, and the rental agency's duty to provide the mandatory minimum limits of insurance to its customer on a primary non-contributory basis pursuant to Vehicle and Traffic Law § 370 ("VTL § 370"), and relevant case law, as well as its duty to defend its customer in the action styled *Wilfredo Pacheco v. Edge Auto, Inc., and Daniel Jaffe*, filed on January 27, 2020, in the Supreme Court, State of New York, Bronx County, Index No. 21304/2020E ("First Action"), and *Wilfredo Pacheco v. Second Child, and Daniel Jaffe*, filed on September 3, 2020, in the Supreme Court, State of New York, Bronx County, Index No. 29846/2020E ("Second Action").¹ This matter also involves void and/or unenforceable provisions of the rental agency's lease agreement.

At issue, is the application of VTL § 370 against 49 U.S.C. § 30106 ("Graves Amendment"), 15 U.S.C. § 1012 (the "McCarran Ferguson Act" hereinafter referred to

1. The First and Second Actions were subsequently consolidated by Pacheco, and are hereinafter referred to as the "Consolidated Action."

as the “Act”), and the State of New York’s sovereignty to regulate matters of insurance.

The Lower Court, First Department, and New York Court of Appeals improperly conflate vicarious liability with the peremptory mandate of VTL § 370 obligating car rental companies such as Edge Auto to obtain and provide the statutory minimum amounts of insurance to their renters on a primary non-contributory basis, and render the peremptory mandate of VTL § 370 meaningless. The Graves Amendment does not change the analysis set forth in *Elrac, Inc. v. Ward*, 96 N.Y.2d 58, 74 (2001), as to the application of VTL § 370.

The Lower Court’s, the First Department’s, and the New York Court of Appeals’ Decisions and Orders also do not comport with the public policy of the State of New York to ensure access to critical insurance benefits for injured victims of traffic accidents. Lastly, the New York Court of Appeals improperly applied the Act finding that while VTL § 370 was impaired by applying the Graves Amendment’s preemptory effect to VTL § 370’s mandatory minimum insurance requirements, the impairment applied to vicarious liability. The impairment of VTL § 370’s primary insurance mandate not only triggers, but requires reverse-preemption under the Act.

If allowed to stand, the decision below would allow Courts of this State to legislate under the guise of interpretation, would foster misapplication of the Graves Amendment and the Act, and would allow federal encroachment into the State insurance ring when there is no such federal intention.

Review is warranted in this case. The issue recurs frequently, and there appears to be confusion amongst the States regarding the application of vicarious liability versus compulsory insurance coverage as applied to commercial motor vehicle rental agencies. These issues represent important questions as to the application of VTL § 370, the Graves Amendment, and the Act. This Honorable Court has never addressed the application of VTL § 370 *vis-à-vis* the Graves Amendment and the Act. The Decisions of the First Department and the New York Court of Appeals relying upon a post-Graves Amendment decision that solely addressed vicarious liability and out-of-state cases furthers the confusion in this State regarding the proper interpretation of VTL § 370 following the passage of the Graves Amendment, as well as the Act, and the State of New York's sovereignty in the insurance arena.

A. NY CLS Veh & Tr § 388

Common law formerly provided that owners of cars would not be liable for the negligence of the chauffeurs who most frequently were the ones behind the wheel. *Psota v. Long Island R. Co.*, 246 N.Y. 388 (1927).

Subsequently, the legislature enacted an earlier version of VTL § 388 to override the common law rule. *Plath v. Justus*, 28 N.Y.2d 16 (1971) (VTL § 388 was enacted “for the purpose of fixing liability on an owner of a motor vehicle for the negligent operation of his car by another with his consent”).

VTL § 388 provides:

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

VTL § 388 also mandated the policies of insurance obtained by vehicle owners cover the vicarious liability previously imposed thereunder. It states, in relevant part: “All bonds executed by or policies of insurance issued to the owner of any vehicle subject to the provisions of this section shall contain a provision for indemnity or security against the liability and responsibility provided in this section. . . .”

B. NY CLS Veh & Tr § 370

VTL § 370 requires rental car companies to carry liability insurance covering every vehicle they own. Such companies must meet minimum insurance standards for claims arising from bodily injury (\$25,000 minimum) and property damage (\$10,000 minimum). The statute provides that the insurance policy shall inure to the benefit of the driver if the driver is operating the vehicle with the owner’s permission.

C. *Elrac, Inc. v. Ward*

In 2001, the New York Court of Appeals was called upon to address the issue of indemnification agreements between car rental agencies and their customers in *ELRAC, Inc. v. Ward*, 96 N.Y.2d 58 (2001). In *Ward*, the New York Court of Appeals, in a unanimous opinion authored by then Chief Judge Judith S. Kaye, held that rental companies are permitted to seek indemnification from their customers only for amounts that exceed the minimum statutory insuring obligations imposed by VTL § 370. *Id.* Finding VTL § 370's language plain and precise, the Court held that it clearly required the rental agency to provide the renter with the minimum level of coverage prescribed by the statute. *Id.* at 73 (“[T]he policy must inure to the benefit of any permissive use of the vehicle. A renter, is of course, a permissive user. Thus, section 370 clearly requires the rental company to provide the renter with its minimal level of coverage.”).

The Court of Appeals in *Ward* also went a step further and held that to the extent an indemnification clause in a rental agreement seeks to disclaim the rental agency's duty to provide primary insurance to its customers up to the minimum liability limits provided by VTL § 370, it is unenforceable to that extent. *Id.* at 78.

D. Graves Amendment

In 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act, otherwise known as the “Graves Amendment” was enacted. The Graves Amendment provides, *inter alia*, that a car rental company is shielded from vicarious liability provided that there is

no negligence or criminal wrongdoing on the part of the owner. *Jones v. Bill*, 10 N.Y.3d 550 (2008).

Although the Graves Amendment specifically supersedes state laws that impose vicarious liability on the commercial renters and lessors of motor vehicles, the Graves Amendment includes a savings clause which provides:

- (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 (emphasis added)
- (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.

See 49 USCS § 30106. *See also* 6 New Appleman on Insurance Law Library Edition § 63.02 (2019).

E. McCarran Ferguson Act

The McCarran Ferguson Act (the “Act”) provides in part that “no Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance.” 15 USCS § 1012.

Under the Act, any state statute that regulates the business of insurance reverse-preempts any federal statute that does not specifically regulate the business of insurance. *Matter of Monarch Consulting, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 26 N.Y.3d 659 (2016).

Courts use a three-part test to determine if the Act applies/reverse preempts a statute: (1) if the federal statute in question does not specifically relate to insurance; (2) the state law at issue was enacted to regulate the business of insurance; and (3) the federal statute at issue would invalidate, impair, or supersede the state law. *Id.* at 670.

F. Proceedings Below

Petitioner Second Child and Respondent Edge Auto, Inc. (“Edge Auto”) entered into a rental agreement dated September 14, 2019, for the rental of a “Hino 14’ Cube” box truck for a period of approximately one (1) day (“Rental Agreement”). On or about September 14, 2019, a motor vehicle accident occurred while the rental vehicle was being driven by Second Child’s then employee, Daniel Jaffe (“Jaffe”). As a result of said incident, Wilfredo Pacheco (“Pacheco”) filed the Underlying Actions against Edge Auto, Second Child, and Jaffe for alleged personal injuries sustained.

Petitioners sought defense and indemnification from Respondents in connection with the Underlying Actions. Respondents did not respond to Petitioners tenders. As such, Petitioners’ were forced to initiate a third-party action against Respondents seeking declarations from the

lower court that: (1) Edge Auto is statutorily obligated to provide insurance to Petitioners on a primary non-contributory basis pursuant to VTL § 370; (2) that Edge Auto is prohibited from seeking indemnification from Petitioners and/or their insurer for amounts up to the statutory minimums imposed by VTL § 370; (3) that Edge Auto and/or its insurer during the relevant time period Maya Assurance Company (“Maya”) are required to undertake the defense and indemnity obligations of Petitioners in the Underlying Actions; (4) that pursuant to VTL § 370 and NY CLS Ins § 3420, Edge Auto and/or Maya are required to provide the statutory minimum amounts of motorist coverage on a primary non-contributory basis; and (5) that, to the extent sections 4 and 8 of Edge Auto’s Rental Agreement seeks to shift Edge Auto’s statutory obligation to obtain and provide minimum amounts of insurance on its vehicles on a primary non-contributory basis to Petitioners and/or their insurer, said provision is null and void as it is in direct violation of New York law, and is void as against public policy.

Petitioners settled the Consolidated Action with Pacheco by way of a Confidential Settlement Agreement and Release dated May 23, 2022. The parties executed and filed a Stipulation of Discontinuance of Pacheco’s claims only on August 13, 2022. (R115-16.) Both Petitioners and Respondents specifically reserved their rights to continue their respective claims against each other. *Id.*

Petitioners filed a Motion for Summary Judgment in the Consolidated Action to dispose of the issues between Petitioners and Respondents, and Respondents cross-moved for Summary Judgment. The Consolidated Action was disposed by the lower court, and the issues between

Petitioners and Respondents were severed under a separate action filed under Index No.: 804034/2023E in the Supreme Court of the State of New York, Bronx County (“Severed Action” and/or “Lower Court”).

The Honorable Marissa Soto (“Judge Soto”) issued a written Decision & Order dated September 15, 2023, denying Petitioners Motion for Summary Judgment. Respondents’ Cross-Motion for Summary Judgment was denied pending the additional filing of the affidavit of Angel Montoya. Mr. Montoya’s affidavit was filed on September 18, 2023. No decision has issued from Judge Soto on Respondents’ Cross-Motion for Summary Judgment to date. Petitioners filed a Motion to Reargue their Motion for Summary Judgment on October 25, 2023. The Lower Court issued a Decision and Order denying Petitioners’ Motion to Reargue dated July 12, 2024.

Petitioners appealed the denial of their Motion for Summary Judgment to the Appellate Division, First Department (“First Department”) and lost. The First Department issued a Decision and Order dated March 13, 2025, affirming the Lower Court’s Order denying Petitioners’ Motion for Summary Judgment holding that the Lower Court properly denied Petitioners’ Motion for Summary Judgment on the ground that “VTL § 370 is superseded by the Graves Amendment to the extent that it requires a rental car company to provide primary insurance to their renters up to the minimum liability limits provided by the statute.” The First Department also held that “Requiring defendants to primarily insure and indemnify plaintiffs’ damages is the precise result barred by the Graves Amendment,” and that vicarious

liability and statutes mandating primary coverage are a “distinction without a difference.”

Petitioners filed a Motion to Reargue the First Department’s March 13, 2025, Decision and Order affirming the Lower Court’s denial of Petitioners’ Motion for Summary Judgment on April 11, 2025. Said Motion to Reargue also included an alternate request for Leave to Appeal to the Court of Appeals. The First Department issued a Decision and Order dated May 22, 2025, denying Petitioners’ Motion to Reargue, but granted Petitioners’ alternative request for Leave to Appeal to the Court of Appeals.

The New York Court of Appeals, following argument, issued a 4-3 decision affirming the decision of the First Department, and entered a Remittitur with the Lower Court on April 23, 2026. Reargument was denied on June 23, 2026.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Misapplies the Graves Amendment to a Financial Responsibility Law of the State of New York

The language of VTL §§ 388 and 370 make clear that the later imposed vicarious liability while the former mandated compulsory insurance coverage for rental companies in the State of New York, and that such insurance shall inure to the benefit of every permissive user. The Supreme Court of the State of New York, Appellate Division, Second Judicial Department hit the nail on the head when it recently held

that an underinsurance claim does not seek to hold a rental company vicariously liable, instead the *Sarmiento* Court determined the defendant sought to recover for the alleged negligence of an uninsured motorist who struck Herc's truck. See *Matter of Government Empls. Ins. Co. v. Sarmiento*, 2025 N.Y. App. Div. LEXIS 5191 (2d Dept Sept. 24, 2025). The *Sarmiento* Court expressly held that the "Graves Amendment has a savings clause permitting states, such as New York, to enforce financial responsibility and insurance standards. . . ."

Likewise, in a recent Nevada Supreme Court case, the Court held that the State's statute imposing a legal requirement that short-term lessors of motor vehicles provide minimum insurance coverage to lessees, rather than merely inducing lessors to do so was not preempted by the Graves Amendment because it is a financial responsibility law preserved by the Graves Amendment's savings clause. See *Malco Enters. of Nev., Inc. v. Woldeyohannes*, 559 P.3d 875 (2024).

The minority-dissent here correctly reasoned that "VTL 370 . . . is different [from § VTL 388]. It does not mention negligence; it provides that insurance must cover "judgment or judgments for damages . . . without regard to any specific cause of action. The insurance required by VTL § 370 does not depend on a theory of vicarious liability, but rather arises from ownership of an automobile rented in New York for use on our roads. The theory of liability is not vicarious—it is simply a requirement of doing business as a car rental company in New York."

The decision reached by the New Your Court of Appeals in *ELRAC, Inc. v. Ward*, 96 N.Y.2d 58 (2001) is directly

on point and, although decided pre-Graves Amendment, remains unscathed in a post-Graves Amendment world.

Although liability had been assessed against ELRAC initially, there was no discussion or analysis of VTL § 388 in *Ward*. Instead, the *Ward* Court primarily focuses on VTL § 370 holding that the language of VTL § 370 alone is “plain and precise. . . . A renter is of course a permissive user. Thus, section 370 clearly requires the rental company to provide the renter with this minimum level of coverage.” The *Ward* Court went further and, in addressing the renter’s antisubrogation rule argument, relied upon *Pennsylvania Gen. Ins. Co. v. Austin Powder Co.*, 68 N.Y.2d 465, 471 (1986), which held that since Austin Powder qualified as an additional insured under the policy purchased by Bison, Liberty Mutual was seeking indemnification from its own insured, in violation of the antisubrogation rule. *Id.* at 471-473. *See also Jefferson Ins. Co. v. Travelers Indemn. Co.*, 92 N.Y.2d 363 (1998) (“for the purposes of the antisubrogation rule, there is simply no reason for treating a ‘permissive user’” who also qualified as an insured under the policy, “differently than the a named insured.”).

Based upon *Pennsylvania* and *Jefferson*, the *Ward* Court held that “allowing ELRAC to enforce the indemnification agreement for sums up to the statutory minimum coverage requirements would, in effect, permit the insurer to pass the incidence of the loss from itself to its own insured and thus avoid the coverage that it is obligated to provide.” Likewise, here Petitioners are permissive users of the Respondent Edge Auto’s rental vehicle and become insured’s from dollar one up to the limits of insurance mandated thereunder up to

the statutory cap. This is not vicarious liability; it is compulsory insurance coverage. Since VTL § 370 and NY Ins. Law § 3420 require that permissive users be insured under the policy required by VTL § 370, it is saved from preemption by the financial savings clause of the Graves Amendment.

II. The Decision Below Eliminates the State of New York’s Sovereignty to Enact Legislation in the Insurance Arena

As distinctly put by the minority-dissent here, “The preemption of state laws represents a serious intrusion into state sovereignty.” (*Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 773, 139 S. Ct. 1894, 204 L. Ed. 2d 377 [2019] [plurality op] [internal [*20] quotation marks omitted]; *see also Raygor v. Regents of Univ. of Minnesota*, 534 U.S. 533, 544, 122 S. Ct. 999, 152 L. Ed. 2d 27 [2002] [States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere]). Accordingly, courts do not evaluate preemption issues in a vacuum, and context can supply further protection against preemption. In all preemption cases, absent some clear and manifest expression of Congress’s purpose, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act (*Wyeth v. Levine*, 555 U.S. 555, 565, 129 S. Ct. 1187, 173 L. Ed. 2d 51 [2009]). . . . When Congress is acting in a field which the States have traditionally occupied, that presumption applies with particular strength (*id.*). Such is the case here, as historically, states have enjoyed a virtually exclusive domain over the insurance industry (*St. Paul Fire & Mar.*

Ins. Co. v. Barry, 438 U.S. 531, 538-539, 98 S. Ct. 2923, 57 L. Ed. 2d 932 [1978]).”

The majority opinion of the New York Court of Appeals affirming the decision of the First Department ignores the State of New York’s autonomy in connection with regulation of insurance. The State of New York’s agreement with Petitioners’ position and amicus appearance in the Court below speaks volumes. *In United States v. South-Eastern Underwriters Assn.*, 322 U.S. 533 (1944), the Supreme Court held that Congress under the commerce clause had the power to regulate the business of insurance, *i.e.*, that insurance was commerce and, when it crossed State lines, interstate commerce. In response, Congress enacted the Act, which declared it to be the policy of Congress “that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.” *Guardian Life Ins. Co. v. Chapman*, 302 N.Y. 226, 240-241 (1951).

In the matter below, both the minority-dissent and State of New York recount that there was initially “fear that the Graves Amendment might permit rental car companies to lease vehicles to uninsured drivers with no recourse for innocent victims should an accident occur.” In response, the Senate sponsor addressed those concerns, explaining that rental cars, “before they can even be registered, have to meet the State’s minimum requirements for insurance. That is up to the States. The decision below eliminates the State’s power to enact state

legislation in the insurance arena, especially when that legislation falls squarely within the coverage of a federal savings clause. *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 607 (2011 plurality) (internal quotation marks and citation omitted).

III. The Decision Below Misapplies the McCarran Ferguson Act

The New York Court of Appeals acknowledged that precluding VTL § 370's primary liability requirement constitutes an "impairment," as to trigger reverse-preemption under the Act but then completely overlooked and/or misapprehended VTL § 370's genesis as an insurance-regulating statute by holding that the "impairment relates to vicarious liability." *Second Child v. Edge Auto, Inc.*, 2026 N.Y. LEXIS 556 (April 23, 2026). It does not. The New York Court of Appeal's misapprehension is demonstrated by its use of the term "liability" after the prefacing term "primary" in its Opinion. This matter is not about vicarious liability or liability itself. This matter involves primary insurance obligations. There is no dispute that primary insurance obligations can exist without fault or liability (i.e., no-fault insurance, uninsured motorist benefits). The two are not mutually exclusive, but do not need each other to be applied in certain instances.

To be completely sure this matter does not revolve around vicarious liability, VTL § 388 previously imposed vicarious liability on the owner of a vehicle for the negligence of a person legally operating the car with the permission, express or implied, of the owner, and it also required in a separate subsection that the owner obtain

vicarious liability insurance. *See* VTL § 388. There is no dispute that VTL § 388, the vicarious liability it previously imposed on vehicle owners, and its corollary requirement for vicarious liability insurance have been preempted by the Graves Amendment.

However, the Legislature did not touch, mention, or make any slight change to VTL § 370. Instead, the Legislature left VTL § 370 completely intact and made sure it survived in total, including, but not limited to the peremptory mandate that the minimum insurance figures mandated thereunder shall inure to the benefit of every permissive user by including the Graves Amendment's financial responsibility savings clause. The First Department's and the New York Court of Appeals' holdings impair the Legislature's command that the permissive users become insured's under the policy of insurance required under VTL § 370 for the minimum amounts mandated thereunder. If the cost of insurance to rental vehicle companies doing business in the State of New York is considered a harm from VTL § 370 as it now exists, it is a problem for the Legislature to correct, if they so choose. The New York Court of Appeals overlooked and/or misapprehended the impairment to VTL § 370's primary insurance mandate, and has legislated under the guise of interpretation to find that the peremptory mandate impairment relates to vicarious liability. This is error. The impairment of VTL § 370's primary insurance mandate not only triggers, but requires reverse-preemption under the Act.

CONCLUSION

For the reasons set forth herein, Petitioners respectfully request the Court grant their Petition.

Respectfully submitted,

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**APPENDIX A — OPINION OF THE COURT OF
APPEALS OF THE STATE OF NEW YORK,
FILED APRIL 23, 2026**

STATE OF NEW YORK
COURT OF APPEALS

No. 30

SECOND CHILD, *et al.*,

Appellants,

v.

EDGE AUTO, INC., *et al.*,

Respondents.

Filed April 23, 2026

OPINION

This decision is uncorrected and subject to revision before publication in the New York Reports.

SINGAS, J.:

The Graves Amendment (49 USC § 30106) plainly shields rental car companies from vicarious liability for damages caused solely by their customer's negligent use of a rental vehicle. This appeal concerns whether that federal statute preempts Vehicle and Traffic Law § 370's

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primary insurance requirement (*see ELRAC, Inc. v. Ward*, 96 N.Y.2d 58, 78, 724 N.Y.S.2d 692, 748 N.E.2d 1 [2001]). We hold that section 370, insofar as we have interpreted it to require such companies to provide primary liability insurance coverage to renters (*see id.*), does not fall within the Graves Amendment’s savings clause and is preempted, but that section 370’s requirement that rental car companies carry a specified minimum amount of insurance is not preempted. We thus affirm the Appellate Division order.

I.

Vehicle and Traffic Law § 370 requires rental car companies to carry liability insurance covering every vehicle they own. Such companies must meet minimum insurance standards for claims arising from bodily injury (\$25,000 minimum) and property damage (\$10,000 minimum) (*see* Vehicle and Traffic Law § 370[1]).¹ The statute provides that the insurance policy “shall inure to the benefit of” the driver if the driver is operating the vehicle with the owner’s permission (*id.*). Separately, but relatedly, Vehicle and Traffic Law § 388 further provides that a vehicle’s owner “shall be liable and responsible” for any damages resulting from the vehicle’s use if the

1. Specifically, section 370 requires that rental companies file a “corporate surety bond or a policy of insurance” with the Commissioner of Motor Vehicles (Vehicle and Traffic Law § 370[1]); if the company owns more than 25 vehicles, the company may instead certify that it has the financial ability to respond to judgments against it arising out of the company’s ownership of the vehicles via a certificate of self-insurance (*see id.* § 370[1][a]; [3]).

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driver had the owner’s permission to operate the vehicle (*id.* § 388[1]).²

In *ELRAC, Inc. v. Ward*, we addressed “the interplay of Vehicle and Traffic Law §§ 370 and 388 with the law of indemnification” (96 N.Y.2d at 72, 724 N.Y.S.2d 692, 748 N.E.2d 1). We began our analysis in *Ward* by acknowledging that the rental company was vicariously liable to injured third parties under section 388 (*see id.* at 73, 724 N.Y.S.2d 692, 748 N.E.2d 1). The question before us was whether section 370 prohibited the company from seeking indemnification from the renter for that vicarious liability for amounts up to the statutory minimum (*see id.*). We held that car rental companies were required to provide “primary insurance to their renters up to the minimum liability limits provided by the statute” (*id.* at 78, 724 N.Y.S.2d 692, 748 N.E.2d 1). We reasoned that section 370 “clearly requires the rental company to provide” such coverage because section 370 required that the subject policy “inure to the benefit” of the driver (*id.* at 73, 724 N.Y.S.2d 692, 748 N.E.2d 1, quoting Vehicle and Traffic Law § 370[1][b]). We further explained that such insurance must be primary, meaning it must cover any losses up to the statute’s minimum threshold, making the driver and their personal insurer responsible only for losses in excess of that minimum (*see id.* at 78, 724 N.Y.S.2d 692, 748 N.E.2d 1; *see also* Black’s Law Dictionary [12th ed 2024],

2. Section 388 is in derogation of the common-law rule, which provided that the owner of a vehicle is liable for injuries caused by that vehicle only if it was driven personally by the owner or the owner’s agent (*see Ward*, 96 N.Y.2d at 73, 724 N.Y.S.2d 692, 748 N.E.2d 1).

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insurance). We reasoned that because the legislature imposed vicarious liability on rental companies for their renters' actions under section 388 and imposed minimum insurance requirements for such liability under section 370, rental companies were required to insure against that liability and indemnify a renter's damages up to the statutory minimum levels (*see Ward*, 96 N.Y.2d at 72–73, 77–78, 724 N.Y.S.2d 692, 748 N.E.2d 1). Had the rental company in *Ward* not been statutorily liable to injured third parties under section 388, the question of which party's insurance would cover that liability never would have arisen.

In 2005, after we decided *Ward*, Congress enacted the Graves Amendment to combat rising costs and lawsuits in New York and other states that imposed vicarious liability on car rental companies (*see* 151 Cong Rec 4096, at 4096 [Mar. 9, 2005] [explaining that such lawsuits “cost consumers nationwide over \$100 million annually,” and higher insurance costs “dr(ove) many small companies out of business”]). At the time, New York was one of only three states that imposed unlimited vicarious liability on rental companies for the negligence of renters (*see* Susan Lorde Martin, *Commerce Clause Jurisprudence and the Graves Amendment: Implications for the Vicarious Liability of Car Leasing Companies*, 18 U Fla JL & Pub Poly 153, 157 [2007]). These unlimited vicarious liability schemes, including New York's specifically, motivated Congress to pass the Graves Amendment (*see* 151 Cong Rec 4096, 4099 [Mar. 9, 2005] [statement of Representative Graves that in states “such as New York, (the rental company is) liable, unlimited liability, just because they own the car. That is not right”]).

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The Graves Amendment “prohibits imposition of vicarious liability on [car rental companies] for injuries resulting from the negligent use or operation of the [rented] vehicle” (*Jones v. Bill*, 10 N.Y.3d 550, 553, 860 N.Y.S.2d 769, 890 N.E.2d 884 [2008]). Its preemption clause states:

“An 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—

“(1) 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”
(49 USC § 30106[a]).

The Graves Amendment also contains a savings clause that limits its preemptive effect:

“Nothing in this section supersedes the law of any State . . .” —

“(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of

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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" (*id.* § 30106[b]).

II.

In 2019, plaintiff Second Child rented a truck from defendant, Edge Auto, Inc. In the operative rental agreement, Edge Auto required Second Child to maintain insurance up to "at least the minimum limits of coverage required by the financial responsibility laws of the state where the loss occurs" and represented that it would provide Second Child liability insurance only in excess to any other valid insurance, and Second Child agreed to indemnify Edge Auto against any liability arising from Second Child's use of the vehicle. While driving the truck, Second Child's employee, plaintiff Daniel Jaffe, sideswiped another car. The damaged vehicle's owner sued plaintiffs for the costs associated with the damage.³ Plaintiffs then filed this action against defendants seeking to recover the costs associated with the damage up to the statutory minimums provided in Vehicle and Traffic Law § 370. In response, defendants argued that under the

3. The owner of the damaged car is not involved in this appeal.

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Graves Amendment, they could not be vicariously liable for damages arising from an accident caused solely by plaintiffs' negligence.

As relevant to this appeal, plaintiffs moved for summary judgment seeking an order declaring that defendants were required pursuant to Vehicle and Traffic Law § 370 to provide insurance “on a primary and non-contributory basis.” Supreme Court denied plaintiffs' motion. The court concluded that the Graves Amendment preempted section 370 and rejected plaintiffs' argument that section 370 is a financial responsibility law subject to the Graves Amendment's savings clause.

The Appellate Division affirmed, holding that “the Graves Amendment does not supersede Vehicle and Traffic Law § 370 insofar as it is a state law that requires rental car companies to carry a specified minimum amount of insurance for each of their vehicles” but “is superseded to the extent it requires a rental car company to ‘provide primary insurance to their renters up to the minimum liability limits provided by the statute’” (236 A.D.3d 499, 501, 230 N.Y.S.3d 59 [1st Dept 2025]). The Court reasoned that “[t]o hold otherwise would rescue every vicarious liability claim up to statutory minimum insurance amounts and render the Graves Amendment's preemption clause a nullity” (*id.* at 502, 230 N.Y.S.3d 59). The Court further held that section 370 does not reverse preempt the Graves Amendment under the McCarran–Ferguson Act, because the Graves Amendment “does not entirely ‘invalidate, impair, or supersede’” section 370 (*id.*). The Appellate Division then granted plaintiffs leave to appeal to this

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Court and certified the question of whether its order was properly made (*see* 2025 N.Y. 69533[U], 2025 WL 1462792 [1st Dept 2025]).

III.

The Graves Amendment clearly preempts Vehicle and Traffic Law § 388, which explicitly imposes vicarious liability on rental car companies for accidents caused solely by their renters.⁴ The issue in this case is whether the primary liability insurance requirement imposed by Vehicle and Traffic Law § 370, as interpreted in *Ward*, is likewise preempted by the Graves Amendment. Plaintiffs agree that defendants are not vicariously liable for injuries caused by the rented vehicle, but argue that the Graves Amendment, by virtue of the savings clause, does not relieve defendants of their obligation to meet New York’s insurance standards. Thus, our preemption analysis turns on whether section 370, interpreted as requiring primary liability coverage, falls within the Graves Amendment’s savings clause.⁵

“[W]hen federal and state law conflict, federal law prevails and state law is preempted” (*Sutton 58 Assoc. LLC v. Pilevsky*, 36 N.Y.3d 297, 305, 140 N.Y.S.3d 897, 164 N.E.3d 984 [2020] [internal quotation marks omitted]). We interpret federal statutes “according to [their] ordinary,

4. The parties agree that section 388 is preempted by the Graves Amendment.

5. Therefore, we need not grapple with implied preemption principles, as the dissent suggests (*see* dissenting op at 4-5, 9-17).

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contemporary, common meaning” (*Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 455, 142 S.Ct. 1783, 213 L.Ed.2d 27 [2022] [internal quotation marks omitted]). We assess plain meaning “by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole” (*Solomon v. Flippis Media, Inc.*, 136 F.4th 41, 51 [2d Cir. 2025] [internal quotation marks omitted]). It is a “cardinal principle of interpretation that courts must give effect, if possible, to every clause and word of a statute” (*United States v. Greenberg*, 127 F.4th 410, 413 [2d Cir. 2025] [internal quotation marks omitted]). And “[w]here an examination of the statute as a whole demonstrates that a party’s interpretation would lead to absurd or futile results plainly at variance with the policy of the legislation as a whole, that interpretation should be rejected” (*Yerdon v. Henry*, 91 F.3d 370, 376 [2d Cir. 1996] [internal quotation marks and ellipsis omitted]).

The Graves Amendment’s savings clause excepts state laws “imposing financial responsibility or insurance standards” on vehicle owners (49 USC § 30106[b][1]), but does not define “financial responsibility” or “insurance standards” (*see id.*). We agree with other jurisdictions’ well settled precedent holding that, in this context “financial responsibility” refers to “state laws which require either liability insurance or a functionally equivalent financial arrangement” (*Garcia v Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1247 [11th Cir. 2008]; *see Malco Enters. of Nev., Inc. v Woldeyohannes*, 140 Nev —, —, 559 P.3d 875, 879 [2024] [collecting cases discussing meaning of “financial responsibility” in the savings clause]; *see also*

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7A Jordan R. Plitt et al., *Couch on Insurance* § 109:34 [3d ed, Dec. 2025 update] [collecting cases]).

An interpretation of section 370 as containing a primary liability insurance requirement⁶ does not fit within that definition. As *Ward* explains, section 370 works in tandem with section 388 to require car rental companies to insure against the vicarious liability that section 388 imposes for damages caused by a renter driving the company's vehicle, resulting in the primary insurance requirement (*see* 96 N.Y.2d at 72–73, 724 N.Y.S.2d 692, 748 N.E.2d 1). But, as discussed, section 388 is clearly preempted by the Graves Amendment, which expressly prohibits states from imposing such liability (*see* 49 USC § 30106[a]). In view of this Court's interlocking interpretation, as section 388 falls, so too must section 370's primary insurance requirement. To conclude otherwise would be to require car rental companies to insure against liability that federal law commands they no longer face. This is precisely the

6. The requirement of primary coverage up to the statutory minimum is not explicit in section 370's text (*see generally* Vehicle and Traffic Law § 370), but is a requirement of that statute given our interpretation in *Ward* (*see* 96 N.Y.2d at 72–73, 78, 724 N.Y.S.2d 692, 748 N.E.2d 1). In essence, this Court read the primary coverage requirement into section 370. No party asks us to overturn *Ward*, and we adhere to our prior interpretation of section 370 (*see Palladino v. CNY Centro, Inc.*, 23 N.Y.3d 140, 151, 989 N.Y.S.2d 438, 12 N.E.3d 436 [2014], quoting *People v. Hobson*, 39 N.Y.2d 479, 489, 384 N.Y.S.2d 419, 348 N.E.2d 894 [1976] ["Precedents involving statutory interpretation are entitled to great stability" under stare decisis framework (internal quotation marks omitted)]). Although federal law provides the preemption framework, interpretation of state statutes is this Court's domain.

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type of absurd result, contrary to well-settled insurance law, that bedrock interpretive principles instruct us to avoid (*see Yerdon*, 91 F.3d at 376; *cf. Zeglen v. Minkiewicz*, 12 N.Y.2d 497, 499, 240 N.Y.S.2d 965, 191 N.E.2d 450 [1963] [“liability insurance protecting an automobile or its driver or owner does not change the nature or extent of the rights and liabilities of the parties”])).

Moreover, interpreting the Graves Amendment in its full context commands that we read the savings clause with an eye toward the Amendment’s primary objective: eliminating vicarious liability for rental companies (*cf. Solomon*, 136 F.4th at 51). Concluding that section 370, as interpreted by *Ward*, is protected by the savings clause would recognize that rental companies no longer face vicarious liability, but nonetheless require that these companies obtain insurance for such liability and defend and indemnify customers in lawsuits arising from their own negligence. Section 370’s primary insurance requirement would, in effect, become a vicarious liability regime masquerading as a financial responsibility statute, in violation of federal law. This “workaround” to the Graves Amendment would undermine its core purpose. Thus, we hold that Vehicle and Traffic Law § 370 is preempted to the extent the statute requires such companies to provide primary liability insurance coverage to renters (*see Ward*, 96 N.Y.2d at 78, 724 N.Y.S.2d 692, 748 N.E.2d 1).

This decision aligns with other jurisdictions’ interpretation of the Graves Amendment. Courts have deemed preempted state statutes that impose liability on car rental companies for their renters’ negligence,

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regardless of that liability's form. For example, the Supreme Court of Minnesota held that the Graves Amendment preempted a Minnesota statute that, although at first appeared to impose an "insurance standard" falling under the Amendment's savings clause, actually functioned as a cap on car rental companies' vicarious liability (*see Meyer v. Nwokedi*, 777 N.W.2d 218, 225–226 [Minn 2010]; *accord Puerini v. LaPierre*, 208 A.3d 1157, 1165 [RI 2019] [deeming a state statute that imposed vicarious liability on rental companies for renters' negligence preempted]; *Vargas v. Enterprise Leasing Co.*, 60 So 3d 1037, 1042–1043 [Fla 2011] [same for a Florida statute]; *Garcia*, 540 F.3d at 1248–1249 [same]; *Rodriguez v. Testa*, 296 Conn. 1, 16–17, 993 A.2d 955, 964 [2010] [deeming a state statute that imposed vicarious liability on rental companies unless they obtained minimum liability insurance coverage preempted]). Other courts have concluded that insurance-like statutes are not preempted because they fall within the Graves Amendment's savings clause, in part because the statutory scheme is not predicated on a primary coverage mandate (like New York's). For example, the Supreme Court of Nevada deemed not preempted a statute that required rental companies to provide secondary insurance coverage to their customers if the company "fails to provide the [renter with] separate short-term rental insurance or security," concluding that the statute was a financial responsibility law (*Malco Enters. of Nev.*, 140 Nev at —, 559 P.3d at 879–881; *see also Puerini*, 208 A.3d at 1166 [deeming not preempted Connecticut statutes that imposed liability on rental companies that failed to meet minimum insurance obligations or rented a vehicle without first determining the renter's financial

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responsibility]). A consensus emerges from these cases: the Graves Amendment preempts state statutes which, in form or effect, purport to impose vicarious liability on car rental companies for damages caused solely by their customer's operation of a rented vehicle, but permits those imposing minimum insurance obligations.

We note that the Graves Amendment does not free car rental companies from all liability arising from the use of a rented vehicle. On the contrary, it expressly permits States to impose liability on rental companies for damages arising from their own negligence or criminal wrongdoing (*see* 49 USC § 30106[a][2]). Nor does the Graves Amendment restrict New York's ability to require rental companies to obtain insurance, no matter what kind, "for the privilege of registering and operating a motor vehicle" (*id.* § 30106[b][1]). Our decision today does not affect section 370's requirement that car rental companies obtain insurance coverage for such other liability or for the privilege of registering vehicles in New York. Rather, we narrowly hold that the Graves Amendment preempts Vehicle and Traffic Law § 370 to the extent that it requires car rental companies to provide primary liability insurance to their renters up to the statute's minimum liability amounts.

IV.

Because Vehicle and Traffic Law § 370 regulates insurance, our preemption analysis must clear an additional hurdle: the McCarran–Ferguson Act (*see* 15 USC § 1012). The McCarran–Ferguson Act constrains federal preemption of state laws regulating the insurance

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industry. It provides that federal legislation cannot invalidate, supersede, or impair a state law regulating insurance unless the federal legislation “specifically relates to the business of insurance” (*id.* § 1012[b]). In other words, the federal preemption of a state insurance law is prohibited where “(1) the federal statute in question does not specifically relate to insurance; (2) the state law at issue was enacted to regulate the business of insurance; and (3) the federal statute at issue would invalidate, impair, or supersede the state law” (*Matter of Monarch Consulting, Inc. v National Union Fire Ins. Co. of Pittsburgh, PA*, 26 N.Y.3d 659, 670, 27 N.Y.S.3d 97, 47 N.E.3d 463 [2016]). Because section 370 and the Graves Amendment undisputedly satisfy the first two of these prongs, the McCarran–Ferguson Act’s applicability rests on the third.

As the U.S. Supreme Court has recognized, a federal law is reverse preempted by virtue of the McCarran–Ferguson Act when the federal law (1) invalidates the state law, meaning “render[s the state law] ineffective;” (2) supersedes the state law, meaning “displace[s]” the state law; or (3) impairs the state law, meaning, the federal law “frustrate[s] a[] declared state policy or interfere[s] with a [s]tate’s administrative regime” (*Humana Inc. v. Forsyth*, 525 U.S. 299, 307, 310, 119 S.Ct. 710, 142 L.Ed.2d 753 [1999]). Here, as already discussed, section 370 survives as a requirement that companies maintain minimum insurance obligations even after the Graves Amendment. Although precluding section 370’s primary liability insurance requirement might be characterized as an “impairment,” that impairment fundamentally relates

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to vicarious liability; any conflict pertaining to insurance only arises secondarily to the question of liability. Section 370's requirement that rental companies obtain an insurance policy, file a surety bond, or file a certificate of self-insurance remains in effect. Because the impairment here does not relate to the business of insurance, the McCarran–Ferguson Act is not offended, and the Graves Amendment is not reverse preempted.

V.

Given the foregoing, Vehicle and Traffic Law § 370's requirement that car rental companies provide primary insurance to their renters up to the statutory minimum liability limits did not survive the Graves Amendment. Supreme Court therefore properly denied plaintiffs' summary judgment motion, which, as relevant here, sought declaratory relief predicated only on such a requirement. Given the narrow scope of plaintiffs' motion and this appeal, we have no occasion to address whether section 370 can be read as requiring rental companies to provide secondary insurance coverage or other kinds of coverage apart from liability insurance, or whether such requirements would run afoul of the Graves Amendment.

Accordingly, the order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

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WILSON, Chief Judge (dissenting):

This case turns on an issue of federal preemption doctrine, not New York law. When deciding whether an act of Congress overrides state law—especially in areas historically retained to state regulation—federal preemption doctrine rests on the proposition that “the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress” (*Rice v. Santa Fe El. Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 [1947]). At issue here is the business of insurance, which is traditionally regulated by the states, not the federal government. Indeed, to ensure that Congress does not interfere with state regulation of the business of insurance, Congress enacted the McCarran–Ferguson Act, an explicit command that statutes regulating the business of insurance be construed against preemption unless very specific conditions are met (15USC § 1012[b]).

In 2005, Congress enacted a law, known as the Graves Amendment, prohibiting states from imposing vicarious liability on car rental companies for the negligence of their drivers (49 USC § 30106[a]). Congress’s concern, as reflected throughout the legislative history of the Graves Amendment, was that certain states, including New York, imposed limitless liability on car rental companies for accidents caused by the negligence of renters. The New York statute imposing that liability—Vehicle and Traffic Law (“VTL”) § 388—was one of the state statutes targeted by the Graves Amendment. On that point the majority and I agree.

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But the Graves Amendment also explicitly carved out, in a savings clause, state laws imposing financial responsibility and insurance requirements on car rental companies (49 USC § 30106[b]). New York also has such a law—VTL 370—which, by its terms, requires that car rental companies maintain minimum amounts of insurance. Even putting aside both federal preemption doctrine and the McCarran–Ferguson Act, the Graves Amendment’s savings clause makes clear Congress did not intend to preempt laws such as VTL 370. But when we apply, as we must, the doubled hurdle of federal preemption doctrine and the McCarran–Ferguson Act, there is simply no basis to conclude that Congress preempted VTL 370. Faithful application of longstanding federal preemption doctrine—largely ignored by the majority—makes abundantly clear why VTL 370 is not preempted by the Graves Amendment.

I.

Because this case is about federal preemption, we must begin there. “Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect” (*Arizona v. United States*, 567 U.S. 387, 398–399, 132 S.Ct. 2492, 183 L.Ed.2d 351 [2012]). Under the Supremacy Clause, “Congress has the power to preempt state law” (*id.*, citing U.S. Const art VI, cl 2). However, “[i]t is never assumed lightly that Congress has derogated state regulation, but instead courts have addressed claims of pre-emption with the starting presumption that Congress does not intend to supplant state law” (*Balbuena v. IDR Realty LLC*,

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6 N.Y.3d 338, 356, 812 N.Y.S.2d 416, 845 N.E.2d 1246 [2006] [internal quotation marks and brackets omitted]; *see also Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 160, 121 S.Ct. 1322, 149 L.Ed.2d 264 [2001, Breyer, J. dissenting] [“the Court has recognized the practical importance of . . . applying pre-emption analysis with care . . . in order to determine how best to reconcile a federal statute’s language and purpose with federalism’s need to preserve state autonomy”]). Congress can supersede state legislation in three ways: express preemption, field preemption or conflict preemption (*New York State Conference of Blue Cross & Blue Shield Plans v Travelers Ins. Co.*, 514 U.S. 645, 654, 115 S.Ct. 1671, 131 L.Ed.2d 695 [1995]; *Balbuena v. IDR Realty LLC*, 6 N.Y.3d 338, 356, 812 N.Y.S.2d 416, 845 N.E.2d 1246 [2006]). Neither the majority nor Edge Auto explains which strain of federal preemption doctrine results in the Graves Amendment’s preemption of VTL 370.

The broadest form of federal preemption doctrine is field preemption, which occurs when federal law occupies a “field” of regulation “so comprehensively that it has left no room for supplementary state legislation” (*Murphy v National Coll. Athletic Assn.*, 584 U.S. 453, 479, 138 S.Ct. 1461, 200 L.Ed.2d 854 [2018], quoting *R.J. Reynolds Tobacco Co. v. Durham County*, 479 U.S. 130, 140, 107 S.Ct. 499, 93 L.Ed.2d 449 [1986]). There is no claim here that the Graves Amendment entirely displaced states from regulating the business of insurance, so field preemption is not at issue.

With express preemption, “Congress may withdraw specified powers from the States by enacting a statute

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containing an express preemption provision” (*Arizona v. United States*, 567 U.S. 387, 399, 132 S.Ct. 2492, 183 L.Ed.2d 351 [2012]). To discern whether Congress’s purpose was to preempt a state law, we “focus on the plain wording of the clause” (*CSX Trans., Inc v. Easterwood*, 507 U.S. 658, 664, 113 S.Ct. 1732, 123 L.Ed.2d 387 [1993]). When faced with ambiguity, we interpret with the “presumption against the pre-emption of state police power regulations” (*Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 508, 112 S.Ct. 2608, 120 L.Ed.2d 407 [1992 plurality]). The Graves Amendment contains an express preemption clause but, as explained in more detail below, that clause addresses only vicarious liability and does not preempt any part of state insurance law.

Finally, conflict preemption, which comes in the two flavors of “impossibility” or “obstacle” preemption, occurs where “compliance with both state and federal law is impossible” or where “the state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’” (*Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377, 135 S.Ct. 1591, 191 L.Ed.2d 511 [2015], quoting *California v. ARC America Corp.*, 490 U.S. 93, 100, 101, 109 S.Ct. 1661, 104 L.Ed.2d 86 [1989]). As explained below, the question here is one of conflict preemption. Regardless of the kind of preemption, the “ultimate touchstone” of our inquiry is Congress’s purpose (*Medtronic, Inc v. Lohr*, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 [1996]).

“The preemption of state laws represents a serious intrusion into state sovereignty” (*Virginia Uranium*,

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Inc. v. Warren, 587 U.S. 761, 773, 139 S.Ct. 1894, 204 L.Ed.2d 377 [2019] [plurality op] [internal quotation marks omitted]; *see also Raygor v Regents of Univ. of Minnesota*, 534 U.S. 533, 544, 122 S.Ct. 999, 152 L.Ed.2d 27 [2002] [“States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere”]). Accordingly, courts do not evaluate preemption issues in a vacuum, and context can supply further protection against preemption. “In all pre-emption cases,” absent some “clear and manifest” expression of Congress’s purpose, we “start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act” (*Wyeth v. Levine*, 555 U.S. 555, 565, 129 S.Ct. 1187, 173 L.Ed.2d 51 [2009] [citation and quotation marks omitted]). When Congress is acting “in a field which the States have traditionally occupied,” that presumption applies with “particular[]” strength (*id.*). Such is the case here, as historically, states have “enjoyed a virtually exclusive domain over the insurance industry” (*St. Paul Fire & Mar. Ins. Co. v Barry*, 438 U.S. 531, 538–539, 98 S.Ct. 2923, 57 L.Ed.2d 932 [1978]).

Moreover, under the McCarran–Ferguson Act, all courts, including ours, operate under an affirmative congressional command that “[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance []” (15 USC § 1012[b]). The Act protects a state law from preemption when: (1) the federal statute in question does not specifically relate to insurance;

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(2) the state law at issue was enacted to regulate the business of insurance; and (3) the federal statute at issue would invalidate, impair, or supersede the state law (*see Humana Inc. v. Forsyth*, 525 U.S. 299, 307, 119 S.Ct. 710, 142 L.Ed.2d 753 [1999]). The McCarran–Ferguson Act is sometimes referred to as so strong a federal policy as to be thought of as “reverse preemption” of federal law by state insurance law (*see e.g. Matter of Monarch Consulting, Inc. v National Union Fire Ins. Co. of Pittsburgh, PA*, 26 N.Y.3d 659, 671, 27 N.Y.S.3d 97, 47 N.E.3d 463 [2016]; *Humana Inc.*, 525 U.S. at 307, 119 S.Ct. 710; *U.S. Dept. of Treasury v. Fabe*, 508 U.S. 491, 505, 113 S.Ct. 2202, 124 L.Ed.2d 449 [1993]). However, the phrase “reverse preemption” does not imply a distinct analytical step performed only after ordinary preemption analysis has been performed. Instead, the Act grants special status to state insurance laws in the context of federal preemption doctrine: against the backdrop of a well-developed body of caselaw that has set up certain presumptions against preemption depending on the context, the Act presents a further federal command to construe federal statutes even more restrictively against preemption in the context of the business of insurance. The “primary objective” of the Act was restoring to the states (following a contrary Supreme Court opinion) the “broad regulatory authority over the business of insurance” they had historically possessed (*Fabe*, 508 U.S. at 505, 113 S.Ct. 2202).

II.

Express preemption requires us to begin with the plain text of the purported preemption provision

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(*Easterwood*, 507 U.S. at 664, 113 S.Ct. 1732). As the Graves Amendment provides:

“An 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 rental or lease, if—(1) 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” (49 USC § 30106[a]).

It is undisputed that this provision preempts state statutes imposing vicarious liability on car rental companies, such as VTL 388. But the plain language of that provision says nothing whatsoever about insurance. That it changes the amount of exposure a car rental company might face, and therefore the cost of insurance, cannot be sufficient to invoke express preemption. If it were, then any federal law that altered the cost of doing business would be sufficient to invoke express preemption.

Nothing in the Graves Amendment prohibits States from requiring car rental companies to carry liability insurance, which is what the plain text of VTL 370 mandates:

“Every person, firm, association or corporation engaged in the business of carrying or transporting passengers for hire in any motor

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vehicle or motorcycle, except street cars, and motor vehicles or motorcycles owned and operated by a municipality, and except as otherwise provided in this section, which shall be operated over, upon or along any public street or highway of the state of New York shall file with the commissioner of motor vehicles for each motor vehicle or motorcycle intended to be so operated evidence, in such form as the commissioner may prescribe, of a corporate surety bond or a policy of insurance” (VTL 370).

“Any such bond or policy of insurance shall also contain a provision that such bond or policy of insurance shall inure to the benefit of any person legally operating the motor vehicle or motorcycle in the business of the owner and with his permission, in the same manner and under the same conditions and to the same extent as to the owner” (VTL 370).

Under routine ordinary-meaning analysis, nothing in the Graves Amendment’s clause limiting the liability of car rental companies mentions anything about the kinds of insurance requirements imposed by VTL 370, or even the word insurance, for that matter.

As if to dispel any doubts, Congress added a savings clause to clarify what the Graves Amendment did not do. Far from supporting a claim of express preemption, the savings clause embodies an affirmative command of non-preemption. The savings clause provides:

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“Nothing in this section supersedes the law of any State . . .—(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 a motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law” (49 USC § 30106[b]).

That savings clause squarely applies to statutes like VTL 370, which (as no one disputes) imposes a minimum insurance requirement, or in the words of the savings clause, an “insurance standard[.]” Even using the majority’s definition, if we take “financial responsibility” laws to mean “state laws which require either liability insurance or a functionally equivalent financial arrangement” (majority op at 8, quoting *Garcia v Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1247 [11th Cir2008]), VTL 370 is just that kind of statute. It provides, without equivocation, that rental car companies must obtain liability insurance as a condition of doing business in New York State (*accord* 7A Couch on Insurance § 109:34 [noting that financial responsibility laws “require automobile coverage for all permissive operators against loss for liability”]). Thus, under the ordinary meaning of the plain terms of the Graves Amendment and VTL 370, the Graves Amendment does not expressly preempt VTL 370.

*Appendix A***III.**

That leaves only conflict preemption. Although the majority does not identify the strain of preemption doctrine on which it relies, its holding uses the language of *effect*, offering at least the implication that its core concern may be conflict preemption (*see* majority op at 10 [expressing concern that VLT 370 would “in effect, become a vicarious liability regime masquerading as a financial responsibility statute”]).

Conflict preemption, a form of implied preemption, requires courts to exercise special restraint: “Implied preemption analysis does not justify a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives; such an endeavor would undercut the principle that it is Congress rather than the courts that pre-empt state law” (*Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 607, 131 S.Ct. 1968, 179 L.Ed.2d 1031 [2011 plurality] [internal quotation marks and citation omitted]). Conflict preemption occurs, as noted above, where “compliance with both state and federal law is impossible,” or where “the state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’” (*Oneok*, 575 U.S. at 377, 135 S.Ct. 1591 [citation omitted]). That is a high bar. The Supreme Court has been clear that “a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act” (*Whiting*, 563 U.S. at 607, 131 S.Ct. 1968 [internal quotation marks and citation omitted]). That difficult hurdle is made even more formidable by the McCarran–Ferguson Act, which applies

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to preemption in all its forms. With conflict preemption in particular, in order to give effect to the Act's mandate to construe against preemption, only the strictest form of conflict preemption—impossibility preemption—would suffice to establish Congress's intent to preempt.

Neither form of conflict preemption applies here. Both New York's Vehicle and Traffic Law and the legislative history of the Graves Amendment show why. When the automobile was new, the common law provided that owners of cars—back then a luxury good perceived to be very dangerous—would not be liable for the negligence of the chauffeurs who most frequently were the ones behind the wheel (*see Psota v. Long Is. R. Co.*, 246 N.Y. 388, 394, 159 N.E. 180 [1927]). In 1924, the legislature enacted an earlier version of VTL 388 to override the common law rule (*see Plath v. Justus*, 28 N.Y.2d 16, 20, 319 N.Y.S.2d 433, 268 N.E.2d 117 [1971] [VTL 388 was enacted “for the purpose of fixing liability on an owner of a motor vehicle for the negligent operation of his car by another with his consent”]). By its terms, VTL 388 provides:

“Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner” (VTL 388).

Subparagraph (4) of VTL 388 specifically requires vicarious liability insurance for owners: “All bonds

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executed by or policies of insurance issued to the owner of any vehicle subject to the provisions of this section shall contain a provision for indemnity or security against the liability and responsibility provided in this section”—meaning, liability of the owner for negligence of the driver. Along with VTL 388, the Legislature enacted a host of related provisions, including VTL 312, which requires all New York vehicles to carry insurance.¹

VTL 370, on the other hand, is different. It does not mention negligence; it provides that insurance must cover “judgment or judgments for damages” (VTL 370[1]), without regard to any specific cause of action. The insurance required by VTL 370 does not depend on a theory of vicarious liability, but rather arises from ownership of an automobile rented in New York for use on our roads. The theory of liability is not vicarious—it is simply a requirement of doing business as a car rental company in New York. For example, if a rental driver gets into an accident at no fault of her own, VTL 370 would still impose liability on the rental company if it failed to obtain insurance coverage up to the statutory minimum.

With the Graves Amendment, Congress had a specific target in mind: unlimited vicarious liability. As

1. VTL 312(1)(a) provides: “1. (a) No motor vehicle shall be registered in this state unless the application for such registration is accompanied by proof of financial security which shall be evidenced by proof of insurance or evidence of a financial security bond, a financial security deposit or qualification as a self-insurer under section three hundred sixteen[.]” That statute also requires the car owner to maintain such proof “continuously throughout the registration period” (VTL 312[1][b]).

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the majority observes, Congress wanted to preempt “unlimited vicarious liability schemes” that imposed liability on rental companies for their renters’ “negligence” (majority op at 4). These laws, the majority reminds us, cost consumers hundreds of millions and claimed the livelihoods of many small businesses (*id.*). The legislative history does contain statements by certain of New York’s Representatives who feared that the Graves Amendment might permit “rental car companies to lease vehicles to uninsured drivers with no recourse for innocent victims should an accident occur” (151 Cong. Rec. 4096, 4096–4097 [2005] [statement of Rep. Jerry Nadler]). Yet the Senate sponsor (and Amendment’s namesake) addressed those concerns, explaining that rental cars, “before they can even be registered, have to meet the State’s minimum requirements for insurance. That is up to the States” (*id.* at 4099 [statement of Sen. Samuel Graves]).

Thus, it is quite clear, from the language of the savings clause, from the language and history of VTL 370, and from the legislative history of the Graves Amendment, that VTL 370 was not Congress’s target in passing the Graves Amendment. Indeed, the savings clause shows just the opposite: Congress intended to preserve state laws like VTL 370. Because, as the majority acknowledges, Congress’ target was “unlimited vicarious liability schemes,” VTL 370 would not be a proper target, because the liability it imposes is capped at the statutory minimums.² An insurance requirement for

2. For vehicles with fewer than seven passengers, the minimum insurance requirements are \$25,000 for bodily injury, \$50,000 for death and \$10,000 for property damage (VTL 370[1], [3]). The amounts have remained unchanged for over 30 years (*see* L 1995, ch 305, §§ 10, 11).

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rental car companies capped at \$25,000 for bodily injury and \$10,000 for property damage is worlds apart from unlimited vicarious liability. Preemption of VTL 370 is neither necessary nor sufficient to achieve Congress's aim of eliminating vicarious liability; preemption of VTL 388 as to car rental companies achieves that aim on its own.

Accordingly, compliance with both federal and state law is clearly possible here, precluding application of impossibility preemption—which is a “demanding defense” (*Wyeth*, 555 U.S. at 573, 129 S.Ct. 1187). As noted above, even if VTL 370 imposed a primary, non-contributory insurance requirement, doing so up to a statutory minimum is, as a practical matter, drastically different from imposing the full brunt of vicarious liability, which is unlimited. VTL 388's preemption ensures the accomplishment of the Graves Amendment's purpose of eliminating such unlimited vicarious liability, and the continued operation of VTL 370, which the majority recognizes largely “survives” even under its view of preemption (majority op at 13), is clearly “possible.”

Nor does VTL 370 pose an obstacle to accomplishment of the Graves Amendment. Obstacle preemption occurs when, “under the circumstances of [a] particular case, [state] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” (*Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 [1941]). As we have held, “the conflict between state law and federal policy must be a sharp one and federal law does not preempt state law under obstacle preemption analysis unless the repugnance or conflict is so direct and positive that the two acts cannot

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be reconciled or consistently stand together” (*Sutton 58 Assoc. LLC v. Pilevsky*, 36 N.Y.3d 297, 309, 140 N.Y.S.3d 897, 164 N.E.3d 984 [2020] [internal quotation marks and citation omitted]). Even in areas of law where federal law overwhelmingly controls (such as immigration) states still retain power to enact state legislation in that arena, especially when that legislation falls squarely within the coverage of a federal savings clause (*see e.g. Whiting*, 563 U.S. at 603, 131 S.Ct. 1968).

Obstacle preemption cannot be established here for the simple reason that VTL 370 does not pose an obstacle to the aims Congress enacted in the Graves Amendment. The majority claims that application of VTL 370 would “undermine [the] core purpose” of the Graves Amendment, the purpose of which the majority characterizes (correctly) as eliminating unlimited vicarious liability for the negligence of the drivers of rental cars (majority op at 10). But to reiterate, the insurance required by VTL 370 is limited to the statutory minimums. Capping the amount of insurance coverage at those statutory minimums, such that car rental companies cannot be exposed to unlimited vicarious liability, does not present a “repugnance or conflict [] so direct and positive that the two acts cannot be reconciled or consistently stand together” (*Sutton*, 36 N.Y.3d at 309, 140 N.Y.S.3d 897, 164 N.E.3d 984 [internal quotation marks and citation omitted]). Further, there are many instances—such as in the example of the rental car driver who gets into a no-fault accident³—where VTL

3. Virtually every accident involves no-fault insurance, as every automobile insurance policy must provide no-fault benefits regardless of who caused the collision. Many proceed with only no-fault insurance, particular when only minor damage or injuries are sustained.

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370 imposes liability on the rental car company unrelated to the negligence of the driver. The majority suggests the savings clause does not apply here on the basis that only a statute imposing *secondary* liability, not primary liability, would qualify as a financial responsibility law, as some other states have apparently concluded (majority op at 11 [citations omitted]).⁴ Yet it is unclear why this

4. The majority’s reliance on decisions of other State courts about the preemption of their state statutes is misplaced (majority at 10-11). Most of those opinions concerned state laws that straightforwardly imposed vicarious liability or joint and several liability on rental car companies, much like VTL 388 (see e.g., *Meyer v. Nwokedi*, 777 N.W.2d 218, 225–226 [Minn 2010]; *Puerini v. LaPierre*, 208 A.3d 1157, 1165 [RI 2019]; *Vargas v. Enterprise Leasing Co.*, 60 So 3d 1037, 1042 [Fla 2011]; *Garcia*, 540 F.3d at 1248–1249; *Rodriguez v. Testa*, 296 Conn. 1, 993 A.2d 955, 964 [2010]). No one disputes that such liability is not what the terms of VTL 370 impose. Moreover, in some of those cases, the state laws were deemed preempted by the Graves Amendment not because they imposed any primary insurance requirement, but because they induced rather than required insurance coverage, which meant they did not fall within *Garcia*’s definition of “financial responsibility laws” and thus were not covered by the savings clause (*Meyer*, 777 N.W.2d at 225; *Rodriguez*, 993 A.2d at 964). The insurance requirement in VTL 370 is an unequivocally mandatory “shall.” The other cases cited by the majority support the opposite point reached by the majority. In *Malco Enterprises of Nevada* (559 P.3d 875, 880–881 [Nev 2024]), the Nevada Supreme Court confronted a statute that “impos[ed] a legal requirement that lessors independently cover lessee liability up to the minimum amount” [emphasis omitted]. The Nevada Supreme Court considered the secondary nature of this coverage important to ensure the statute did not, in effect, become a vicarious liability law (*id.* at 881). This is, in effect, the position taken by Edge Auto,

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would be the case. If the operative concern of Congress is the *unlimited* extent of vicarious liability, there is no functional difference between primary and secondary insurance requirements, insofar as each simply imposes statutory minimums.

Finally, *ELRAC, Inc. v. Ward*, 96 N.Y.2d 58, 78, 724 N.Y.S.2d 692, 748 N.E.2d 1 [2001], discussed at length by the majority, is not germane to preemption, nor does it support the majority's rewriting of the statute to distinguish between primary and secondary liability. In *ELRAC*, we held that rental car companies could not contractually shift the VTL 370 liability onto renters, because the VTL 370 liability was primary and noncontributory to the vicarious liability imposed by VTL 388. Determining that the legislature intended that rental companies bear the responsibility to secure primary, noncontributory insurance covering the statutory minimum as a condition of operating a rental car business in New York does not create a conflict with

which reassures us that its view would not lead to any glaring gaps in liability because "Section 370 would still require insurers to provide secondary insurance to drivers who do not have their own insurance with the statutory minimum liability insurance." But that distinction does not stand up to the slightest scrutiny. Under that view, it is somehow vicarious liability to require an insurance company to primarily insure an insured driver, but it is not vicarious liability to require the same company to pay for the liability incurred by an uninsured driver who gets into an accident. The operative variable is whether the driver is insured, but that is not a basis on which to classify what is (or is not) vicarious liability. Nor can such a classification be found anywhere in New York's statutory scheme or the Graves Amendment.

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the Graves Amendment's exemption directed at barring the unlimited vicarious liability of car rental companies. Essentially, the majority's interpretation depends on the proposition that the legislature would not have enacted VTL 370 unless it could have imposed vicarious liability on car rental companies via VTL 388. But VTL 388 standing alone would have imposed vicarious liability on car rental companies as the owners of the rented vehicles; for that reason, VTL 370 must have been enacted to serve a different purpose. Whereas the majority construes VTL 370 as entirely dependent on VTL 388 (and therefore somehow related to preemption), the opposite is true: VTL 370 imposes a different and independent obligation for minimum coverage as a condition of rental companies doing business in New York. That VTL 370 and 388 are codified in different statutes and serve different ends (*supra*, at 10-11) further militates against the majority's holding. Indeed, the implication of the majority's opinion is that all the Legislature must do to overcome its holding is to reenact VTL 370 without any reference to VTL 388, making clear that it is not based on a theory of vicarious liability, but rather an insurance requirement required to do business in New York. Moreover, the interpretation proposed by Edge Auto and adopted by the majority—that ELRAC supports preemption of VTL 370 insofar as imposes primary but not secondary liability—finds no support in the Graves Amendment or preemption doctrine, further eroding its soundness. As the majority appears to acknowledge (majority op at 13), we have not been confronted here with the argument that, in light of VTL 388's partial preemption as to boundless vicarious liability for car rental companies, VTL 370 now requires

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something other than primary and noncontributory liability. All we have before us is the text of VTL 370, the Graves Amendment, and the facts of this case; based on that, it is not possible to conclude that Congress expressly preempted VTL 370.

In bypassing well-established principles of federal preemption meant to safeguard the balance of power between Congress and the states, the majority works a result that will increase costs and could leave many New Yorkers without a remedy in the case of an accident involving a rental vehicle. If all that VTL 370 now requires is that car rental companies obtain insurance for their own negligent acts, there will be no statutory backstop to prevent rental car companies from either renting to uninsured drivers or requiring each driver to obtain her own insurance policy as a condition of using a rental vehicle. In either case, it is New York consumers who will bear the financial burden of personal insurance policies and increased premiums across the board. Nothing in the Graves Amendment requires the costly result imposed today by the majority, which Congress, by including the savings provision, expressly sought to avoid.

Order affirmed, with costs, and certified question answered in the affirmative. Opinion by Judge Singas. Judges Rivera, Garcia and Cannataro concur. Chief Judge Wilson dissents in an opinion, in which Judges Troutman and Halligan concur.

Decided April 23, 2026

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**APPENDIX B — OPINION OF THE SUPREME
COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST JUDICIAL
DEPARTMENT, FILED MARCH 13, 2025**

SUPREME COURT OF THE STATE
OF NEW YORK APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

3239

Index No. 804034/23
Case No. 2023-05393

SECOND CHILD, *et al.*,

Plaintiffs-Appellants,

-against-

EDGE AUTO, INC., *et al.*,

Defendants-Respondents.

Order, Supreme Court, Bronx County (Marissa Soto, J.), entered on or about September 25, 2023, which, to the extent appealed from as limited by the briefs, denied plaintiffs' motion for summary judgment seeking a declaratory judgment, unanimously affirmed, without costs.

Plaintiffs rented a vehicle from its owner, defendant Edge Auto, Inc. A nonparty commenced an action against

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plaintiffs seeking damages arising out of a traffic accident involving their operation of the rented vehicle. Plaintiffs filed a third-party complaint against Edge Auto and its insurer seeking a judgment declaring, among other things, that Edge Auto was statutorily obligated to provide insurance to plaintiffs on a primary non-contributory basis pursuant to Vehicle and Traffic Law § 370; that Edge Auto or its insurance company were required to undertake the defense and indemnity obligations of plaintiffs in the underlying action; and that Edge Auto was prohibited from seeking indemnification from plaintiffs or their insurer for amounts up to the statutory minimums imposed by Vehicle and Traffic Law § 370. After defendants answered, plaintiffs moved for summary judgment seeking substantially the same relief requested in the third-party complaint. Supreme Court correctly denied plaintiffs' motion.

Vehicle and Traffic Law § 370 provides that rental car companies “shall file with the commissioner of motor vehicles . . . evidence of . . . a corporate surety bond or policy of insurance” (Vehicle and Traffic Law §§ 370[1], [3]). “Any such bond or insurance policy...shall inure to the benefit of any person legally operating the motor vehicle” (*id.*). The Court of Appeals has interpreted the “shall inure to the benefit” language of Vehicle and Traffic Law § 370 to “require[] rental car companies to provide primary insurance to their renters up to the minimum liability limits provided by the statute” (*ELRAC, Inc. v Ward*, 96 NY2d 58, 78 [2001]). *Ward* holds that rental car companies “may not seek indemnification for amounts up to the minimum liability requirements” (*id.* at 73).

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After the Court of Appeals decided *Ward* in 2001, the U.S. Congress enacted the Graves Amendment (49 USC § 30106) in 2005. The Graves Amendment’s operative provision, the preemption clause, states:

“An 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 rental or lease, if -- (1) 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” (49 USC § 30106[a]).

The Amendment contains a savings clause, titled “Financial responsibility laws,” which provides:

“Nothing in this section supersedes the law of any State . . . -- (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” (49 USC § 30106[b]).

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Plaintiffs argue that the Graves Amendment does not supersede Vehicle and Traffic Law § 370 as interpreted by *Ward*. They effectively concede that the plain language of the preemption clause bars liability against Edge Auto (*see* 49 USC § 30106[a]). Their argument instead rests on the savings clause, contending that Vehicle and Traffic Law § 370, as interpreted by *Ward*, is a financial responsibility law and thus not superseded (*see* 49 USC § 30106[b]).

We conclude that the Graves Amendment does not supersede Vehicle and Traffic Law § 370 insofar as it is a state law that requires rental car companies to carry a specified minimum amount of insurance for each of their vehicles (*see id.*; Vehicle and Traffic Law § 370[1][b], [3]; *37 S. Fifth Ave. Corp. v Dimensional Stone & Tile*, 58 Misc 3d 56, 59 [App Term, 2d Dept 2017]).

However, Vehicle and Traffic Law § 370 is superseded to the extent it requires a rental car company to “provide primary insurance to their renters up to the minimum liability limits provided by the statute” (*Ward*, 96 NY2d at 78; *see* 49 USC § 30106[a]; *Dimensional*, 58 Misc 3d at 59-60; *see also Subrogation Division Inc. v Brown*, 446 F Supp 3d 542, 552-553 [D SD 2020]). Requiring defendants to primarily insure and indemnify plaintiffs’ damages is the precise result barred by the Graves Amendment (*see* 49 USC § 30106[a]; *Brown*, 446 F Supp 3d at 553).

Plaintiffs argue that the Graves Amendment only supersedes statutes imposing vicarious liability (*see e.g.* Vehicle and Traffic Law § 388; *Hernandez v Sanchez*, 40 AD3d 446, 447 [1st Dept 2007]), not statutes mandating

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primary coverage. This is a distinction without a difference. Rental car companies “shall not be liable” under New York State law for damages incurred by renters (49 USC § 30106[a]). The form in which state law attempts to impose vicarious liability, whether under vicarious liability statutes or under primacy of insurance coverage statutes, does not matter (*see Brown*, 446 F Supp 3d at 553). To hold otherwise would rescue every vicarious liability claim up to statutory minimum insurance amounts and render the Graves Amendment’s preemption clause a nullity (*see Dimensional*, 58 Misc 3d at 59-60; *see generally Garcia v Vanguard Car Rental USA, Inc.*, 540 F 3d 1242, 1248 [11th Cir 2008]).

Additionally, Vehicle and Traffic Law § 370 does not reverse preempt the Graves Amendment under the McCarran-Ferguson Act (15 USC § 1012[b]). The New York State Legislature, in subjecting rental car companies to the requirements of Vehicle and Traffic Law § 370, “sought to ensure that rental cars – when operated by renters – were covered by a minimum amount of insurance” (*Ward*, 96 NY2d at 75 [emphasis omitted]). Vehicle and Traffic Law § 370 ensures that rental car companies “will be financially capable of covering a statutorily specified minimum amount of damage for the types of liability which continue even following the passage of the Graves Amendment, i.e., when the liability is based on the [rental car companies’] own negligence or criminal wrongdoing” (*Dimensional*, 58 Misc 3d at 59).

Accordingly, the Graves Amendment does not entirely “invalidate, impair, or supersede” Vehicle and Traffic Law

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§ 370 and Vehicle and Traffic Law § 370 does not reverse preempt the Graves Amendment under the McCarran-Ferguson Act (*see Matter of Monarch Consulting, Inc. v National Union Fire Ins. Co. of Pittsburgh, PA*, 26 NY3d 659, 670 [2016], citing 15 USC § 1012[b]; *Humana Inc. v Forsyth*, 525 US 299, 307 [1999]).

We have considered plaintiffs' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND
ORDER OF THE SUPREME COURT, APPELLATE
DIVISION, FIRST DEPARTMENT.

ENTERED: March 13, 2025

/s/Susanna Molina Rojas
/Susanna Molina Rojas
Clerk of the Court

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**APPENDIX C — DECISION AND ORDER OF THE
SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF BRONX, DATED JULY 16, 2024**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 22

SECOND CHILD AND DANIEL JAFFE,

Plaintiff,

v.

EDGE AUTO INC. AND MAYA
ASSURANCE COMPANY,

Defendants.

July 2, 2024, Decided
July 16, 2024, Filed

Index No. 804034/2023E

MOT.SEQ.2

Hon. Marissa Soto, J.S.C.

<u>Papers</u>	<u>NYSCEF Doc. No.</u>
Notice of Motion, Affirmation/ Affidavit in Support and Exhibits thereto:	49-72

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Affirmation in Opposition and Exhibits thereto:	73-76
Reply and Exhibits thereto:	77

DECISION AND ORDER

Plaintiffs Droga5 Studios, LLC, doing business as Second Child (incorrectly referred to as Second Child1), and Daniel Jaffe (hereinafter “Plaintiffs”) move for an Order pursuant to CPLR § 2221(d) granting their Motion to Reargue. Plaintiffs seek reconsideration of the Court’s Order dated September 15, 2023, granting their Motion for Summary Judgment, denying Defendants’ Cross-Motion for Summary Judgment, and for such other relief as the Court deems just and proper. Edge Auto, Inc., and Maya Assurance Company (hereinafter “Defendants”) oppose this motion.

The Plaintiffs argue that this Court misapprehended the law in their initial Motion for Summary Judgment. Specifically, Plaintiffs contend the Court misunderstood three key issues: first, that the Graves Amendment does not preempt VTL § 370 and therefore does not alter the analysis established in *ELRAC, Inc., Ward*, 96N.Y.2d 58 (2001); second, that the case *37 S. Fifth Ave. Corp. v Dimensional Stone & Tile*, 58 Misc.3d 56 (N.Y App. Div. 2nd Dept. 2017) does not hold that the Graves Amendment preempts VTL § 370; and third, that VTL § 370 reverse preempts the Graves Amendment by virtue of the McCarran-Ferguson Act.

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In support of these arguments, Plaintiffs have submitted: (i) Maya Assurance Policy Declarations; (ii) Complaint - First Action; (iii) Complaint - Second Action; (iv) Answer; (v) Order Consolidating Actions; (vi) 11/19/2020 Tender; (vii) 1/28/21 Tender; (viii) 5/18/21 Correspondence; (ix) 6/30/21 Correspondence; (x) 8/9/21 Correspondence; (xi) Third-Party Complaint; (xii) Edge/Maya Answer to Third-Party Complaint; (xiii): Third-Party Plaintiff Answer to Counterclaim; (xiv) Stipulation of Discontinuance; (xv) Order Severing Action; (xvi) Notice to: County Clerk: (xvii) 9/15/23 Order regarding Motions for Summary Judgment. Defendants oppose.

In opposition, Defendants assert the following points: (1) the Court properly analyzed Graves against VTL 370, and thus the Court correctly analyzed the decisions in *ELRAC LLC v. Duque*; (2) the Court correctly analyzed the *37 S. Fifth Ave. Corp v. Dimensional Stone & Tile* decision; and (3) the Graves Amendment does not violate the McCarran Ferguson Act. Defendants support their assertions with the following documents: (i) Defendants' Affirmation in Support of Original Cross-Motion; (ii) Defendants' Affirmation in Opposition to Plaintiffs' Original Motion for Summary Judgment.

Upon reviewing the arguments presented by both parties, the Court has determined, as will be discussed below that the Plaintiffs' Motion for leave to reargue is not justified, and as such, their motion is hereby **denied**.

*Appendix C***Legal Standard**

CPLR: § 2221(d) provides that a motion for leave to reargue: (1) shall be identified specifically as such; (2) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining; the prior motion, but shall not include any matters of fact not offered on the prior motion; and (3) shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. See CPLR § 2221(d). A motion for leave to reargue pursuant to CPLR § 2221 is addressed to the sound discretion of the court and may be: granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision. See *William P. Pahl Equip. Corp. v. Kassiss*, 588 N.Y.S.2d 8 (1st Dept. 1992); *Foley v. Roche*, 68 A.D.2d 558 (1st Dept. 1979).

Analysis**Graves Amendment Partially Preempts VTL § 370 on Rental Company Liability, Altering *ELRAC, Inc. v. Ward* (2001) Analysis**

Before delving into the analysis, as a preliminary matter, the Court finds that Plaintiffs have satisfied the first and third prongs of CPLR § 2221(d). The focus now shifts to the second prong, which will be the centerpiece of the ensuing arguments.

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Plaintiffs argue that the Graves Amendment only preempts VTL § 388 but does not preempt the insuring obligations mandated by VTL § 370, which are to be primary and contributory. (P. Memo of Law, NYSCEF Dkt. No. 72, p.7). Essentially, the Plaintiffs argue that the Graves Amendment does not erase the Lessor Defendants' liability, because VTL 370 is really a "financial responsibility law" that creates a separate cause of action against lessors of motor vehicles. Therefore, they argue the statute is expressly exempted from the Graves Amendments' preemption provisions. Plaintiffs add that no case law to date holds otherwise. *Id.* In support, Plaintiffs cite several cases, all of which were previously cited in their papers and predate the Graves Amendment. Consequently, these cases lack relevance to the current legal landscape post-Graves, and thus were appropriately disregarded by this Court (See Decision and Order, Soto, J., NYSCEF Dkt. No. 47, p.8).

Regarding the Cases cited by Plaintiffs post-Graves, there are three: *Peters v. Hertz*, 56 Misc 3d 1210(A), 2017 NY Slip Op 50930(U) (Mt. Vernon City Ct July 13, 2017); *Meigel v. Schulman*, 24 Misc. 3d 1242(A) (Sup. Ct. 2009); and *ELRAC LLC v. Duque*, 52 Misc. 3d 30 (N.Y. App. Div. 1st Dept, 2016). With respect to the first two cases, the Court finds them unpersuasive. As for the remaining case, previously addressed in its prior decision, the Court noted the absence of any discussion or consideration of the Graves Amendment. Moreover, the appellate term is not obliged to introduce this issue sua sponte on appeal. See Decision and Order, NYSCEF Doc. 43, p. 8. Consequently, Plaintiffs: have not substantiated their; position with adequate support.

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On the other hand, the Court finds compelling evidence that by its express language, the Graves Amendment preempts all state statutory and common law to the extent those laws hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrongdoing on the part of the owner (see 49 USC §30106).

At the State level, such cases include *37 S. Fifth Ave. Corp. v. Dimensional Stone & Tile*, 58 Misc.3d 56, 60 (N.Y App. Term. 2017) (herein after “37 South”), *Antoine v. Kalandrishvili*, 150 A.D.3d 941, 942 (2nd Dept. 2017), and *Aviaev v. Nissan Infiniti LT*, 150 A.D.3d 807 (2nd Dept. 2017), which address leased vehicles. Additionally, cases like *Anglero v. Hanif*, 140 A.D.3d 905 (2nd Dept. 2016); *Eisenberg v. Cope Besiway Express, Inc.*, 131 A.D.3d 1198, 1200-1201 (2nd Dept 2015), *Bravo v. Vargas*, 113 A.D.3d 579, 580 (2nd Dept 2014), *Pedroli v. Mercedes-Benz USA, LLC*, 94 A.D.3d 842, 843-844 (2nd Dept. 2012), and *Ballatore v. HUB Truck Rental Corp.*, 83 A.D.3d 978, 979 (2nd Dept. 2011) address rental vehicles and affirm this preemption.¹

At the federal level, similar conclusions have been reached. In *Green v. Toyota Motor Credit Corp.*, 605 ESupp.2d 430,434 (E.D.N.Y, 2009), the court held that the

1. *Cf Matter of Allstate Ins. Co. v. ELRAC Inc.*, 26 Misc.3d 1234[A] 2010 N.Y., Slip Op.50370[U]. 2010 WL 841371 (Sup.Ct., Kings County 2010) and *ELRAC. Inc. v. Russo*, 19 Misc.3d 1143[A]. 2008 N.Y. Slip Op. 51155[U], 2008 WL 2346134 (Nassau Dist. Ct. 2008).

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Graves Amendment clearly preempts state laws imposing vicarious liability on car rental and leasing companies. Other federal cases supporting this view include *Flagler v. Budget Rent a Car Sys.*, 538 F.Supp.2d 557, 558 (E.D.N.Y. 2008); *Rein v. CAB E. LLC*, No. 08 CIV. 2899FAC, 2009 WL 1748905, at *1 (S.D.N.Y. June 22, 2009); *Pacho v. Enterprise Rent-A-Car Co.*, 572 F.Supp.2d 341, 350 (S.D.N.Y. 2008); *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F3d 1242 (11th Cir. 2008); *Kersey v. Hirano*, No. WDQ-08-1041, 2009 U.S. Dist LEXIS 60489, at *10-11, 2009 WL 2151845 (D.Md. Jul.15, 2009), *Carton v. GMAC*, 639 F.Supp.2d 982, 990 (N.D. Iowa 2009), *Rodriguez v. Testa*, 296 Conn. 1, 4-5, 993 A.2d 955, 958 (2010); and *Martin v. Crook*, No.9-491/08-1711, 2009 Iowa App. LEXIS 784, at *29, 2009 WL 2392077 (Iowa Ct. App. Aug. 6, 2009).

In all, the cited cases, both State and Federal, while not binding, collectively wield significant persuasive authority in affirming that the Graves Amendment preempts statutes akin to VTL § 370 to the extent those laws hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrongdoing on the part of the owner.

This pivotal legal interpretation fundamentally reshapes the liability framework, affording robust protection to rental companies against unwarranted claims for damages solely attributable to renters. This preemption expansively encompasses state insurance laws, securing rental companies from liability beyond their

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own negligence or misconduct. Without this safeguard, these insurance mandates could become a ubiquitous tool, as Plaintiffs endeavor here, to evade Graves and unjustly hold blameless companies accountable, contravening the federal law's intent to prevent such circumvention.

Thus, the weight of this unified judicial consensus at both the State and Federal level underscores the paramount understanding of Graves which unequivocally affirms that rental companies cannot be held vicariously liable, even under the guise of insurance laws, when they bear no culpability for the actions in question.

The rhetorical question from a district court in Maine elegantly and succinctly encapsulated why the Plaintiffs' argument is not logically sound. The Court posited:

“Why would Congress expressly preempt state laws that imposed joint and several liability on car rental companies in one part of SAFETEA-LU (Graves) only to allow continued joint and several liability in the guise of state financial responsibility statutes in another? The answer is that Congress did not.”

See *Enter. Rent-A-Car Co. of Bos., LLC v. Maynard*, No. 2:11-CV-00047-JAW, 2012 WL 1681970, at *9 (D. Me. May 14, 2012).

The Court finds that the wisdom of the District Court in Maine shines through as it points out the discernible flaw in Plaintiffs' argument regarding VTL 370.

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In sum, VTL 370 primarily functions as a mechanism to ensure the collection of damages rather than establishing a separate basis for imposing liability for those damages. The interpretation put forth by Plaintiffs, which would preserve the potential for vicarious liability through the guise of insurance, would directly contradict the fundamental purpose of the Graves Amendment, and render it ineffective and essentially hollow. This would be allowing the exception to swallow the rule, a scenario that simply cannot be justified. Accordingly, the Graves Amendment unequivocally preempts VTL § 370 to the extent it holds owners in the business of renting or leasing motor vehicles vicariously liable: for the negligence of drivers, except when there is negligence or criminal wrongdoing on the part of the owner, thereby altering the analysis set forth in *Ward* (2001).

Indeed, the Case Of *37 S. Fifth Ave. Corp. V. Dimensional Stone & Tile* Does Not Assert That the Graves Amendment Preempts VTL § 370. However, This Point Is Inconsequential.

Plaintiffs assert that the Court misunderstood crucial aspects of the ruling in *37 South*. They argue that the Court failed to grasp that the *37 South* decision established the \$10,000 minimum liability insurance requirement for property damage under VTL § 370(1)(b) as part of the financial responsibility provisions preserved by the Graves Amendment's savings, clause. Additionally, Plaintiffs contend that there was no thorough discussion regarding the primacy of coverage in *37 South*. As a result, Plaintiffs conclude that due to the Court's misinterpretation of the

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37 S. Fifth Ave. Corp. ruling, it overlooked the fact that the Graves Amendment does not preempt VTL § 370, thus pursuant to VTL § 370, Defendants bear financial responsibility for the: accident based on the terms of the insurance policy and its on a primary and contributory basis.

The Plaintiffs' observation regarding the *37 South* decision's failure to explicitly address the Graves Amendment's preemption of VTL § 370 is accurate. However, as previously deliberated by this Court and elucidated in its prior decision (NYSCEF Doc. 47), VTL § 370 remains akin to a river running alongside the Graves Amendment's landscape. While not wholly overtaken by Graves, it is diverted to ensure it does not erode the protective banks safeguarding innocent rental car companies. This ensures these companies are not swept away by liability for damages in which they bear no responsibility, thereby preserving the federal law's intended shelter against unwarranted legal turbulence.

In simpler words, the Plaintiffs seem to overlook a fundamental legal reality: VTL 370's survival does not taper the impact of the Graves Amendment. Professor Susan Lorde Martin's commentary in "Commerce Clause Jurisprudence and the Graves Amendment: Implications for the Vicarious Liability of Car Leasing Companies" put things in layman's terms. She explains that "the Graves Amendment emerged after intense lobbying efforts by car dealer groups, aiming to eradicate vicarious liability. Despite these efforts falling short at the state level, they bore fruit in Congress with the enactment of SAFETEA-LU. This legislation now unequivocally shields car rental

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and leasing businesses from liability for damages caused by their vehicles, provided there is no negligence on their part.”

Coupling Professor Martin’s layman’s explanation with the Graves Amendment’s legislative history and intent, and a clear picture emerges: The Graves Amendment was crafted to protect car rental and leasing companies from vicarious liability. This intent stands firm regardless of the existence of state insurance laws like VTL 370. As discussed earlier, it would indeed be imprudent for Congress to overtly preempt state laws that impose joint and several liability on car rental companies in one section of Graves only to seemingly permit the continuation, of such liability through state insurance laws in another section.

Thus, while Plaintiffs are indeed correct in pointing out that the *37 South* court did not expressly declare the Graves Amendment as preempting VTL § 370, the absence of this explicit preemption does not change the fundamental effect of the Graves Amendment - that it stands; as a shield, safeguarding car rental and leasing businesses from liability for damages caused by their vehicles, provided they demonstrate no negligence, while VTL § 370 continues to operate alongside it.

VTL § 370 Does Not Reverse Preempt the Graves Amendment by Virtue of the McCarran Ferguson Act

The last issue to address is a rather uncommon argument - reverse preemption. Plaintiffs argue, albeit in a conclusory manner, that VTL 370, through the

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McCarran-Ferguson Act, reverses the preemption imposed by the Graves Amendment. This, they argue, allows Defendants' insurance policy to inure to their benefit. Essentially, Plaintiffs are trying to indirectly hold Defendants financially accountable via the McCarran-Ferguson Act, even though Defendants played no part in the accident. Despite the commendable effort put forth by Plaintiffs, the Court deems this argument futile.

Before we can weigh the validity of Plaintiffs' argument, it is essential to delve into the legal bedrock they rely upon - the McCarran-Ferguson Act. This Act is of paramount importance as it asserts that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance...". *see* 15 USC §1012[b], The application of this Act hinges on a three-pronged test: (1) the federal law in question must not specifically target insurance matters; (2) the state law in question must have been enacted to oversee insurance business affairs; and (3) the federal statute should not negate, hinder, or surpass the state law's provisions (see *Id.*; *Monarch Consulting, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 47 N.E.3d 463, 470 [2016], citing *Humana Inc. v. Forsyth*, 119 S. Ct. 710, 714 [1999]).

Notably, the first two prongs of this test coalesce harmoniously in the present context - the Graves Amendment does not distinctly focus on insurance matters,² whereas VTL 370 is unmistakably crafted to

2. On August 10, 2005, the Safe Accountable Flexible Efficient Transpiration Equity Act: A Legacy for Users (SAFETEA-

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oversee affairs related to insurance.³ The determination of whether the McCarran-Ferguson Act is applicable hinges on the third criterion - whether the enforcement of the Graves Amendment, by imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating it, would result in the “invalidation, impairment, or supersession” of VTL 370 (15 USC § 1012[b]).

It is on this third prong that the Act fails. This is so because VTL 370 is not “invalidated, superseded or impaired*” by application of the Graves Amendment. As the Supreme Court explained in *Humana Inc.*, [t]he terms ‘invalidate’ ordinarily means ‘to render ineffective, generally without providing a replacement rule or law’” and “the term ‘supersede’ ordinarily: means ‘to displace (and thus render ineffective) while providing a substitute rule’ (525 U.S. at 307, 119 S.Ct. 710 [citations omitted]). The Supreme Court has interpreted the term “impair” more broadly to mean “[t]o weaken, to make worse, to lessen in power, diminish, or relax, or otherwise affect in

LU), a comprehensive transportation bill was signed into law SAFETEA-LU includes a provision eloquently known as the Graves Amendment codified at 49 U.S.C.A. § 30106, which deals with rented or leased motor vehicle safety and responsibility and essentially prohibits states from imposing vicarious liability on owners or lessors where such liability is the sole basis for bringing them into a civil suit.

3. N.Y. Veh. & Traf. Law §370: see also NYS Open Legislation | NYSenate.gov - VTL § 370 falls under Title 3. Article 8 titled “Indemnity Bonds or Insurance Policies On Vehicles Transporting Passengers For Hire” available at <https://www.nysenate.gov/legislation/laws/VAT/T3A8>.

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an injurious manner” (*id.* at 309-310, 119 S.Ct 710, quoting Black’s Law Dictionary 752 [6th ed. 1990]). Although the term “impair” broadens the reach of the McCarran-Ferguson Act beyond federal statutes that directly conflict with a state law regulating insurance, “when application of the federal law would not frustrate any declared state policy or interfere with a State’s administrative regime, the McCarran-Ferguson Act does not preclude its application” (*id.* At 310, 119 S.Ct. 710).

In probing into VTL 370, it becomes apparent that it does not thrust liability onto the defendants. Instead, it intricately outlines the insurance coverage rental car companies must secure to address their own potential liabilities. This Crucial distinction underscores the fundamental purpose of VTL 370 - to ensure that rental car companies demonstrate financial responsibility by either obtaining insurance or filing a bond, thereby guaranteeing their ability to handle claims they may be accountable for. This core objective of VTL 370 remains unscathed by the Graves Amendment. The Graves Amendment, by design, does not interfere with VTL 370’s essence of mandating financial responsibility; rather, it complements this requirement by reinforcing the importance of rental car companies assuming responsibility for their own acts and those of their agents. Hence, it is clear that the Graves Amendment does not invalidate, impair or supersede VTL 370, as both statutes serve to uphold the integrity of financial responsibility within the rental car industry.

Hence, since VTL 370 merely requires a rental car company to demonstrate to the state of New York, either

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through insurance purchase or bond filing, its capability to settle liability claims, it is not accurate to assert that the Graves Amendment diminishes, displaces, or weakens VTL § 370 in any manner. As a result, Plaintiffs' contention of reverse preemption is unavailing.

CONCLUSION

In sum, Plaintiffs have failed to provide a convincing argument that meets the second prong of a motion to reargue. Their assertions overlook the coexistence of VTL § 370 and Graves, and they disregard the preemptive effect that prevents the misuse or exploitation of VTL § 370 against innocent rental companies. Consequently, Plaintiffs' motion is denied with prejudice. Accordingly, it is hereby

ORDERED that Plaintiffs' Motion to Reargue is hereby **denied**.

ORDERED that counsel for Defendants shall serve a copy of this order with notice of entry within thirty (30) days upon all parties; it is further

This constitutes the decision and order of the Court.

Dated: July 12, 2024

/s/ Marissa Soto
HON. MARISSA SOTO, J.S.C.

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**APPENDIX D — DECISION AND ORDER OF
THE SUPREME COURT FOR THE STATE OF
NEW YORK, COUNTY OF BRONX,
DATED SEPTEMBER 15, 2023**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 22

INDEX NO.: 804034/2023E
MOT. SEQ. 1

SECOND CHILD AND DANIEL JAFFE,

Plaintiff(s),

-against-

EDGE AUTO, INC, AND
MAYA ASSURANCE COMPANY,

Defendant(s).

DECISION AND ORDER

Hon. Marissa Soto
Justice of the Supreme Court
Recitation, as required by CPLR 2219(a), of the papers
considered in the review of this motion:

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<u>Papers:</u>	<u>NYSCEF Doc. #s/ Numbered</u>
Notice of Motion and attached exhibits and affidavits:	3 – 27
Opposition and attached exhibits and affidavits:	30 – 32
Cross Motion Filings and attached exhibits and affidavits:	35 – 40
Reply:	41 – 42

Plaintiffs Second Child and Daniel Jaffe (hereinafter “Plaintiffs”) move for an Order pursuant to CPLR § 3212, against Defendants Edge Auto. Inc., (hereinafter “Edge Auto”) and Maya Assurance Company (hereinafter “Maya” collectively known as the “Defendants”) declaring that (i) Defendants were statutorily obligated to provide insurance to Plaintiffs on a primary noncontributory basis pursuant to VTL § 370 and NY CLS Ins § 3420; (ii) Defendant Edge Auto is prohibited from seeking indemnification from Plaintiffs and/or their insurer for amounts up to the statutory minimums imposed by VTL § 370; (iii) that the Defendants were required to undertake the defense of Plaintiffs in the severed action filed under Index No. 21304/2020E; (iv) Plaintiffs are entitled to reimbursement in the amount of \$25,000.00 representing Defendant’s mandatory minimum insuring obligation for bodily injury under VTL § 370; (v) all reasonable attorneys’ fees, costs, and disbursements in defending against the severed action filed under Index No. 21304/2020E, including pre and post judgment interest; (vi) Sections 4, and 8 of the Rental Agreement are null

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and void and/or are unenforceable, as they violate VTL § 370, and they also-violate the public policy of the State of New York; and (vii) for such other and further relief as this Court deems just and proper.

Defendants oppose the motion and cross move pursuant to CPLR §3212 granting summary judgment in favor of the Defendants (i) dismissing the Plaintiffs' complaint against said Defendants on the grounds that Defendants cannot be held vicariously liable under VTL §388 pursuant to the Transportation Equity Act of 2005. 49 USC §30106 also known as the Graves Amendment, (ii) declaring that Defendants are not statutorily obligated to provide insurance coverage to Plaintiffs on a primary non-contributory basis pursuant to VTL §370 and/or N.Y. Insurance Law §3420(e) in light of the Graves Amendment, and (iii) together with such other and further relief as this Court deems just and proper

Plaintiffs allege that on September 14, 2019, Plaintiff Jaffe was operating a rental vehicle in or around West 26th Street and 7th Avenue, New York, New York, while attempting to slowly pass Wilfredo Pacheco's (hereinafter "Pacheco") vehicle, the Rental made slight contact with Pacheco's vehicle (hereinafter the "Accident"). Defendant, Maya was insured by Defendant Edge Auto at the time of the accident. Pacheco filed suit on or about January 27, 2020, in the Supreme Court of the State of New York, Bronx County, which action is styled *Wilfredo Pacheco v. Edge Auto, Inc., and Daniel Jaffe* under Index No. 21304/2020E (hereinafter the "First Action"). Pacheco filed a second complaint based upon the same incident and

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set of facts as the First Action, on or about September 3, 2020 (the “Second Action”). Pacheco filed a Motion to Consolidate the First and Second Actions on June 23, 2021, which was granted on December 22, 2021. The matters were consolidated under Index No. 21304/2020E. Plaintiffs initiated a third-party action against Defendants in the Second Action on February 9, 2021. The third-party action was severed on March 13, 2023, under the above-captioned matter.

In support of its motion, the Plaintiffs submit *inter alia* the following: (i) Rental Agreement between Second Child and Edge Auto dated September 14, 2019, (ii) a copy of the Police Report dated September 14, 2019 (iii) a copy of the. declaration page of the policy of insurance Maya issued to Edge Auto bears Policy No. 3-MC002004, with a policy period of April 18, 2019 to April 19, 2020, (iv) a copy of the Complaint filed by Wilfredo Pacheco (hereinafter “Pacheco”) in the First Action filed under Index No. 21304/2020E (hereinafter “First Action”), (v) a copy of the Complaint filed by Pacheco in the Second Action on September 3, 2020, (vi) a copy of Plaintiffs’ Answer with Affirmative Defenses filed in the Second Action on November 18, 2020, (vii) copy of the Court’s Order granting Pacheco’s Motion to Consolidate the First and Second Actions (the First and Second Action are hereinafter collectively referred to as the “Consolidated Action”), (viii) Plaintiffs’ November 19, 2020 tender to Defendants, (ix) a copy of Plaintiffs’ January 28, 2021 tender to Maya, (x) Plaintiff’s correspondence on May 18, 2021, June 30, 2021, August 9, 2021, (xi) pleadings of the Third-Party Complaint, (xii) a copy of the stipulation

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of discontinuance of Plaintiff's claims only on August 13, 20123, (xiii) copy of The Honorable Veronica Hummel's Order dated February 2, 2023, (xiv) Notice to County Clerk under CPLR§ 8019(c) filed on March 13, 2023, and (xv) a printout from the New York State Department of Financial Services website accessed on. August 2, 2021.

Plaintiffs argue that the Defendants are obligated to provide the mandatory minimum amount of insurance to third party plaintiffs on a primary non-contributory basis pursuant to VTL §370, since the instant action arose out of Pacheco's claims for damages for alleged personal injuries he sustained by the Plaintiffs while they used a rental vehicle owned by Edge Auto. Plaintiffs claim that the Defendants failed to defend the Plaintiffs in the severed action and are entitled to reasonable attorneys' fee. Plaintiffs further argue that Section 4 and 8 of the rental agreement are null and void under New York Law and/or are unenforceable to the extent they seek to shift Edge Auto's statutory minimum insuring obligations and seek complete indemnification.

In opposition, the Defendants submit *inter alia* (i) the unsigned and unnotarized Affidavit of Angel N. Montoya maintenance supervisor of the Third-Party Defendant Edge Auto from the. First Action, (ii) a copy of the rental agreement and (iii) response to statement of material facts. Defendant argues that they are not statutorily obligated to provide insurance to Plaintiffs on a primary non-contributory basis pursuant to VTL §370 and or New York State Insurance Law §3420 in light of the Graves Amendment. Defendants argue that in the

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absence of any statutory obligation, that specifically and expressly imposes the obligation on Edge Auto or similar entities engaged in the business of renting and/or leasing vehicles to make their statutory insurance requirements be primary, paragraph 8 of the rental agreement, which makes the renters/lessees' insurance policy primary, is valid and enforceable.

It is well established that summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986). The burden is upon the moving party to make a *prima facie* showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of material facts. *Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72 (2003). The failure to oppose a motion for summary judgment alone does not justify the granting of summary judgment. Instead, the court must still assess whether the moving party has fulfilled its burden of demonstrating that there is no genuine issue of material fact and its entitlement to judgment as a matter of law. *Winegrad, et al., v. New York University Medical Center*, 64 N.Y.2d 851 (1985); *Liberty Taxi Mgt., Inc. v. Gincheran*, 32 A.D.3d 276 (1st Dept 2006). "In other words, even in the face of a nonmovant's silence or a poorly drafted response, summary judgment may not be granted unless the movant has met their burden of establishing entitlement to judgment as a matter of law." *Rivera v. State of New York*, 34 N.Y.3d 383, 401-402 (2019). The function of the court on a motion for summary judgment is issue finding rather than issue determination, and the court must evaluate whether the alleged factual

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issues presented are genuine or unsubstantive. *Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 394 (1957).

The threshold issue presented to the Court by the summary judgment motions is which statute governs the insurance obligations and the apportionment of liability in the present rental arrangement. The Graves Amendment states in relevant part, the following:

(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—

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(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 [enacted Aug. 10, 2005] without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment.

49 USCS § 30106

The First Department has held that the Graves Amendment prevents the owner of a leased or rented motor vehicle from being, held vicariously liable “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).” *Villa-Capellan v. Mendoza*, 135

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A.D.3d 555, 556 (1st Dept. 2016) (citing 49 USC § 30106 [a]; see *Jones v Bill*, 10 NY3d 550, 553, 890 NE2d 884, 860 NYS2d 769 [2008]; cert dismissed 555 US 1028; 129 S Ct 593, 172 L Ed 2d 451 [2008]) (held that the rental company, U-Haul, sufficiently established that the accident was not the result of negligent maintenance of the vehicle on its part and granted summary judgment dismissal under the Graves Amendment.). The First Department has required that for summary judgment to be granted based on the Graves Amendment, a defendant must show there are no material facts on either prong of the Graves Amendment’s required. qualifiers. A defendant must establish there are no material facts as to whether it falls within its ambit of protected commercial lessors. *Davidov v. Salazar*, 89 A.D.3d 463, 463 (1st Dept. 2011) (denying summary judgment because there was insufficient proof that the defendant was a bona fide commercial lessor). Similarly, the First Department has held that a defendant must also address the lack of any mechanical defect affecting the subject rental vehicle due to negligence or criminal wrongdoing on their part. *Steigelman v. Transervice Lease Corp.*, 210 A.D.3d 515, 516 (1st Dept 2022). However, if the negligence or criminal wrongdoing is not pleaded, the First Department has not required an affirmative showing to satisfy this prong. *Kalair v. Fajerman*, 202 A.D.3d 625, 627 (1st Dept 2022) (“ . . . plaintiff did not allege any mechanical defects in the subject vehicle . . . [A]s such, Bancorp is entitled to judgment as a matter of law under the Graves Amendment”).

Plaintiffs’ arguments to the contrary rely on 49 USC § 30106 [b], arguing that it is a safety clause that permits

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the states' laws requiring insurance to remain in force. Plaintiffs' argument is premised primarily on case law that has been effectively superseded by the enactment of the Graves Amendment. However, as other courts have explained, to interpret such safety clause as broadly as suggested by Plaintiffs would permit states to nullify 49 USC § 30106 [a] in its entirety. The cases decided after the Graves Amendment enactment are distinguishable or contrary to the Plaintiffs' argument. Plaintiffs cite *ELRAC LLC v Duque*, 52 Misc. 3d 30 (1st Dept App Term 2016) for the proposition that the Graves Amendment did not disturb the applicability of *ELRAC, Inc., v. Ward*, 96 N.Y.2d. 58 (2001), however the Graves Amendment was not raised or addressed in that decision. Therefore, it was not for the appellate term to raise *sua sponte* on appeal. *ELRAC LLC v Duque*, 52 Misc. 3d 30. Plaintiffs also cite *37 S. Fifth Ave. Corp. v. Dimensional Stone & Tile*, 58 Misc.3d 56 60 (App. Term, 2d Dept., 9th and 10th Jud. Dist. 2017). However, that case expressly holds that the Graves Amendment precludes vicarious liability by rental car companies and gives numerous citations to the other courts in this state that have held the same since its enactment. *37 S. Fifth Ave. Corp. v Dimensional Stone & Tile*, 58 Misc. 3d at 59-60 (internal citations omitted) ("while [the requirement that rental companies secure the minimum insurance on their rental vehicles] is explicitly not superseded under the Graves Amendment, its survival in no way undercuts the Graves Amendment's absolute exemption of commercial renters and lessors of motor vehicles from liability for damages caused solely by the negligence of those who rent or lease from them; to hold otherwise would rescue every vicarious liability suit

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in New York State, at least up to the \$10,000 statutory minimum insurance amount for property damage set forth in Vehicle and Traffic Law § 370(1)(b), and would, to that extent, render the federal preemption clause (US Const, art VI, cl 2) a nullity).

The Graves Amendment simultaneously shields *bona fide* commercial lessors of motor vehicles from vicarious liability but permits states to require such commercial lessors to carry the minimum insurance coverage on all vehicles. With that as the framework, the Court will now address the application of the facts of the present case to the law. Plaintiffs' motion for summary judgment fails on the law. Defendants' cross-motion for summary judgment also fails because there are questions of fact that have not been proven as a matter of law. Plaintiffs do not allege any negligence or criminal wrongdoing on the part of the Defendants so the Court will not address that prong. *Kalair v. Fajerman*, 202 A.D.3d at 627. However, Defendants must first show that the Graves Amendment is applicable to them. It is unconverted in this case that the vehicle in question was the subject of a rental agreement thereby fulfilling the nature of the relationship between the parties at the time of Plaintiffs' use of the vehicle. The only remaining question is whether Defendants have met their burden on summary judgment that they are commercial lessors of motor vehicles. Here they have produced no competent evidence to that effect. The alleged affidavit filed for this purpose was unsigned. NYSCEF Doc. No. 31, 37. However, pursuant to CPLR 2001 and the likelihood that such omission was a filing error, the Court will permit the Defendants to refile their affidavit. The

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Court will permit the Plaintiffs to object to the additional filing but exclusively on the issue of whether Defendant is a commercial lessor of motor vehicles.

The Court has considered all the remaining arguments and find that they do not warrant a contrary result, finds them unavailing.

Accordingly, it is hereby:

ORDERED AND ADJUDGED that the Plaintiffs motion for summary judgment is denied; and it is further

ORDERED AND ADJUDGED that Defendants' cross-motion for summary judgment is denied pending the additional filing of the affidavit of Angel Montoya only by September 28, 2023 on NYSCEF with a courtesy copy emailed to Chambers, if another affidavit is offered, a new motion will need to be filed; and it is further

ORDERED AND ADJUDGED that Plaintiff will have the ability to object to the sufficiency and refute the affidavit's contents on or before October 12, 2023 filed on NYSCEF with a courtesy copy emailed to Chambers; and it is further

ORDERED AND ADJUDGED that no reply will be accepted by the Court; and it is further

ORDERED AND ADJUDGED that a copy of this. Decision and Order with Notice of Entry be served by

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the prevailing party upon all parties to the present action within thirty (30) days of the date of entry.

This constitutes the decision and order of the Court.

Dated: September 15, 2023

s/ Hon. Marissa Soto
HON. MARISSA SOTO, J.S.C.

**APPENDIX E — DECISION AND ORDER OF
THE SUPREME COURT FOR THE STATE OF
NEW YORK, COUNTY OF BRONX,
DATED FEBRUARY 2, 2023**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31

Index No. 21304/2020E
HON. VERONICA G. HUMMEL, A.J.S.C.
Mot. Seq. No. 3

WILFREDO PACHECO,

Plaintiff,

-against-

EDGE AUTO INC., SECOND CHILD AND
DANIEL JAFFE,

Defendants.

SECOND CHILD AND DANIEL JAFFE,

Third-Party Plaintiffs,

-against-

EDGE AUTO, INC. AND
MAYA ASSURANCE COMPANY,

Third-Party Defendants.

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In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in connection with: (1) defendants/third-party plaintiffs SECOND CHILD's and DANIEL JAFFE's ("Third-Party Plaintiffs") motion (Seq. No. 3) seeking an order granting them a variety of relief against defendants/third-party defendants EDGE AUTO, INC. and MAYA ASSURANCE COMPANY ("Third-Party Defendants") concerning Third-Party Defendants' obligations to provide insurance coverage to Third-Party Plaintiffs; and (2) Third-Party Defendants' cross-motion (Seq. No. 3) seeking an order, pursuant to CPLR 3212, granting them summary judgment dismissing Third-Party Plaintiffs' third-party complaint on the grounds, among others, that Third-Party Defendants were not statutorily obligated to provided insurance coverage to Third-Party Plaintiffs.

By Order dated December 22, 2021 [NYSCEF Doc. 15], the Court consolidated *Wilfredo Pacheco v. Edge Auto Inc. and Daniel Jaffe*, Index No. 21304/2020E, Bronx County (Action #1), with *Wilfredo Pacheco v. Second Child and Daniel Jaffe*, Index No. 29846/2020E, Bronx County (Action #2), under the **Index No. 21304/2020E**. Prior to this consolidation, Third-Party Plaintiffs filed a third-party complaint against Third-Party Defendants in Action #2 seeking a declaratory judgment as to their and Third-Party Defendants' respective rights and duties with respect to, among other things, insurance coverage, indemnification, and the provision of a legal defense herein (the "Third-Party Action").

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By stipulation of discontinuance, dated June 1, 2022 [NYSCEF Doc. 59], plaintiff WILFREDO PACHECO (“Plaintiff”) discontinued her motor-vehicle accident based personal injury causes of action against each of defendants EDGE AUTO INC., SECOND CHILD, and DANIEL JAFFE (together, “Defendants”).

A prior motion by Third-Party Plaintiffs (Seq. No. 2) for the Court to so-order the stipulation was subsequently withdrawn by Order of the Court dated August 2, 2022 [NYSCEF Doc. 61]. That Order noted that Third-Party Plaintiffs’ third-party claim remained pending pursuant to the parties’ stipulation.

To facilitate the continuation of the Third-Party Action, **which is based only on contract and insurance law, and does not include personal injury claims**, it is hereby

ORDERED that the Third-Party Action be **SEVERED**; and it is further

ORDERED that upon severance, the Third-Party Action **shall be assigned a new Index Number** and proceed thereunder; it is further

ORDERED that upon severance, because all of Plaintiff’s personal injury causes of action against Defendants herein have now been discontinued, this action (21304-2020e) shall be marked as fully **DISPOSED**; and it is further.

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ORDERED that, because only the Third-Party Action will continue under the newly assigned Index Number, and because the Third-Party Action is a dispute only over entitlement to insurance coverage, and is not a dispute concerning personal injury resulting from a motor-vehicle accident, the Third-Party Action shall be, upon severance, **referred to the Clerk/Motion Support Office for reassignment**, and the Clerk/Motion Support Office shall transfer and randomly reassign the Third-Party Action to a non-Motor-Vehicle Part and remove it from the inventory of Part 31; and it is further

ORDERED that because Third-Party Plaintiffs' motion [Mot. Seq. 3] and Third-Party Defendants' cross-motion were both filed herein but concern the contract dispute at issue in the Third-Party Action, the motion and cross-motion are **DENIED with leave to renew** under the newly assigned Index Number upon the action's assignment to a non-Motor-Vehicle Part.

The Clerk shall mark the motion and cross-motion (Seq. No. 3) disposed in all court records and, after severance, mark this action disposed in said court records..

This constitutes the decision and order of the Court.

Dated: February 2, 2023

Hon. s/ Veronica G. Hummel
HON. VERONICA G. HUMMEL, A.J.S.C.

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1. THIRD-PARTY ACTION..... ☒ SEVER ☒ ASSIGN
NEW INDEX NUMBER
☒ REASSIGN TO NON-
MOTOR VEHICLE PART
2. MOTION SEQ 3 IS..... ☐ GRANTED ☒ DENIED
☐ GRANTED IN PART
☐ OTHER
3. INDEX NO. 21304/2020E..... ☒ CASE DISPOSED IN
ITS ENTIRETY
☐ CASE STILL ACTIVE
**REFER SEVERED
ACTION UNDER NEW
INDEX NUMBER TO A
NON-MOTOR VEHICLE
PART.**

**APPENDIX F — EXCERPT OF DECISIONS
FOR THE STATE OF NEW YORK COURT OF
APPEALS, DATED JUNE 23, 2026**

STATE OF NEW YORK
COURT OF APPEALS

Decisions

Mo. No. 2026-377

SECOND CHILD *et al.*,

Appellants,

v.

EDGE AUTO, INC. *et al.*,

Respondents.

June 23, 2026

Motion for reargument denied.

**APPENDIX G — ORDER DENYING REHEARING
OF THE SUPREME COURT OF THE STATE OF
NEW YORK FOR THE APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT,
FILED MAY 22, 2025**

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

Motion No. 2025-02135
Index No. 804034/23
Case No. 2023-05393

SECOND CHILD, *et al.*,

Plaintiffs-Appellants,

-against-

EDGE AUTO, INC., *et al.*,

Defendants-Respondents.

Present – Hon. Cynthia S. Kern, Justice Presiding,
Barbara R. Kapnick
Lizbeth González
Manuel J. Mendez
Kelly O’Neill Levy, Justices.

Plaintiffs-appellants having moved for reargument
of, or in the alternative, for leave to appeal to the Court
of Appeals from, the decision and order of this Court,
entered on March 13, 2025 (Appeal No. 3239),

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Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion, insofar as it seeks reargument of the decision and order of this Court, entered on March 13, 2025 (Appeal No. 3239), is denied,

And it is further ordered that the motion, to the extent it seeks leave to appeal to the Court of Appeals, is granted and this Court, pursuant to CPLR 5713, certifies that the following question of law decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals.

Was the order of this Court, which affirmed the order of the Supreme Court, properly made?

This Court further certifies that its determination was made as a matter of law and not in the exercise of discretion.

ENTERED: May 22, 2025

s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

APPENDIX H — PROVISIONS INVOLVED**15 U.S.C. § 1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948**

(a) **State regulation.** The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) **Federal regulation.** No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act [15 USCS §§ 1 et seq.], and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 USCS §§ 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

* * *

*Appendix H***49 U.S.C. § 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

* * *

*Appendix H***NY CLS Ins § 3420. Liability insurance; standard provisions; right of injured person.**

* * *

(e) No policy or contract of personal injury liability insurance or of property damage liability insurance, covering liability arising from the ownership, maintenance or operation of any motor vehicle or of any vehicle as defined in section three hundred eighty-eight of the vehicle and traffic law, or an aircraft, or any vessel as defined in section forty-eight of the navigation law, shall be issued or delivered in this state to the owner thereof, or shall be issued or delivered by any authorized insurer upon any such vehicle or aircraft or vessel then principally garaged or principally used in this state, unless it contains a provision insuring the named insured against liability for death or injury sustained, or loss or damage occasioned within the coverage of the policy or contract, as a result of negligence in the operation or use of such vehicle, aircraft or vessel, as the case may be, by any person operating or using the same with the permission, express or implied, of the named insured.

* * *

*Appendix H***NY CLS Veh & Tr § 370. Indemnity bonds or insurance policies; notice of accident.**

1. Every person, firm, association or corporation engaged in the business of carrying or transporting passengers for hire in any motor vehicle or motorcycle, except street cars, and motor vehicles or motorcycles owned and operated by a municipality, and except as otherwise provided in this section, which shall be operated over, upon or along any public street or highway of the state of New York shall file with the commissioner of motor vehicles for each motor vehicle or motorcycle intended to be so operated evidence, in such form as the commissioner may prescribe, of a corporate surety bond or a policy of insurance: (a) approved as to form by the superintendent of financial services in a company authorized to do business in the state, approved by the superintendent as to solvency and responsibility; or (b) where a vehicle is registered by a not-for-profit organization that is tax-exempt under section 501(c)(3) of the federal internal revenue code, a risk retention group not chartered in this state but which is registered with the superintendent of financial services under the federal liability risk retention act of 1986, comprised entirely of organizations that are tax-exempt under section 501(c)(3) of the federal internal revenue code and where the risk retention group qualifies as a charitable risk pool under section 501(n) of the federal internal revenue code, provided that the vehicle being registered does not have a seating capacity of more than fifteen passengers, is not a limousine or luxury limousine, and where such vehicles are not solely for personal use by a director, officer, authorized person, or key person, their relatives or related parties. Such surety bond or policy

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of insurance shall be conditioned for the payment of a minimum sum, hereinafter called minimum liability, on a judgment or judgments for damages, including damages for care and loss of services, because of bodily injury to, or death of any one person in any one accident, and subject to such minimum liability a maximum sum, hereinafter called maximum liability on a judgment or judgments for damages, including damages for care and loss of services because of bodily injury to, or death of two or more persons in any one accident and for the payment of a minimum sum, called minimum liability on all judgments for damages because of injury to or destruction of property of others in any one accident, recovered against such person, firm, association or corporation upon claims arising out of the same transaction or transactions connected with the same subject of action, to be apportioned ratably among the judgment creditors according to the amount of their respective judgments for damage or injury caused in the operation, maintenance, use or the defective construction of such motor vehicle or motorcycle as follows:

For damages for and incident to death or injuries to persons and injury to or destruction of property: For each motorcycle and for each motor vehicle engaged in the business of carrying or transporting passengers for hire, having a seating capacity of not more than seven passengers, a bond or insurance policy with a minimum liability of twenty-five thousand dollars and a maximum liability of fifty thousand dollars for bodily injury, and a minimum liability of fifty thousand dollars and a maximum liability of one hundred thousand dollars for death and a minimum liability of ten thousand dollars for injury to or destruction

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of property; for each motor vehicle engaged in the business of carrying or transporting passengers for hire, having a seating capacity of not less than eight passengers, a bond or insurance policy with a combined single limit of at least one million five hundred thousand dollars for bodily injury or death to one or more persons, and because of injury to or destruction of property in any one accident; provided, further that for commuter vans that are engaged in the business of carrying or transporting passengers for hire, having a seating capacity of not less than eight passengers, a bond or insurance policy with a combined single limit of at least five hundred thousand dollars for bodily injury or death to one or more persons, and because of injury to or destruction of property in any one accident. For the purposes of this paragraph, the term “commuter van” shall have the same meaning as such term is defined in section 19-502 of the administrative code of the city of New York.

Such bond or policy of insurance shall contain a provision for a continuing liability thereunder, notwithstanding any recovery thereon. Any such bond or policy of insurance shall also contain a provision that such bond or policy of insurance shall inure to the benefit of any person legally operating the motor vehicle or motorcycle in the business of the owner and with his permission, in the same manner and under the same conditions and to the same extent as to the owner.

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* * *

3. A person, firm, association or corporation engaged in the business of renting or leasing rental vehicles to be operated upon the public highways for carrying passengers shall be subject to the provisions of this section in the same manner and to the same extent as if such person, firm, association or corporation were actually engaged in the business of carrying or transporting passengers for hire.

Notwithstanding the provisions of subdivision one of this section, a person, firm, association or corporation engaged in the business of renting or leasing motor vehicles, having registered in this state more than twenty-five motor vehicles subject to the provisions of this section and who qualifies as hereinafter provided, may file a certificate of self-insurance. The commissioner of motor vehicles in his discretion may, upon the application of such a person, firm, association or corporation issue a certificate of self-insurance when he is reasonably satisfied that such person is possessed and will continue to be possessed of financial ability to respond to judgments obtained against such person, arising out of the ownership, maintenance, use or operation of any such person's motor vehicle. Upon due notice and hearing, the commissioner may, in his discretion and upon reasonable grounds, cancel a certificate of self-insurance.

* * * *