

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYDER TRUCK RENTAL, INC.

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
ex rel. THE COUNTY OF CLARK, AND
THE HONORABLE JUDGE NANCY
ALLF,

Respondent.

NICOLE LIMON, an individual,

Real Party In Interest.

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PETITIONER RYDER TRUCK RENTAL, INC.'S REPLY BRIEF

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COMES NOW Petitioner RYDER TRUCK RENTAL, INC. (“Ryder”) and hereby submits this REPLY BRIEF (the “Reply”), with the following Memorandum of Points and Authorities. This Reply is brought pursuant to Nevada Rules of Appellate Procedure (“NRAP”) 21(a) for issuance of a writ of mandamus

directing the district court, Department XXVII of the Eighth Judicial District of Nevada, Respondent Honorable District Judge Nancy Alf presiding, to make a determination that Ryder should be dismissed from this matter under the 49 USC §30106, commonly known as the Graves Amendment.

Dated this 13th day of December 2021.

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**AFFIDAVIT OF KARIE N. WILSON, ESQ., IN SUPPORT OF
PETITIONER RYDER TRUCK RENTAL, INC.'S REPLY BRIEF**

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

KARIE N. WILSON, ESQ., being first duly sworn, on oath, deposes and says:

1. I am licensed to practice law in this court, and I am a Partner of the law firm of ALVERSON TAYLOR & SANDERS, attorneys for Petitioner Ryder Truck Rental, Inc., in support of its REPLY BRIEF.

2. I certify that I have read this Reply, and to the best of my knowledge, information and belief, this Reply complies with the form requirements of Rule 21(d), and that it is not frivolous or interposed for any improper purpose such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

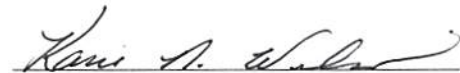
3. I further certify that this Reply complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with requirements of the Nevada Rules of Appellate Procedure.

4. I have discussed the REPLY BRIEF with the appropriate persons at

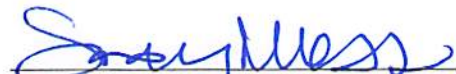
Ryder Truck Rental, Inc. and have obtained authorization to file this Reply.

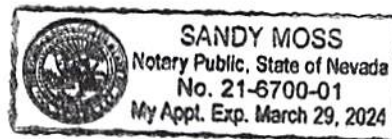
5. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of December 2021.


Karie N. Wilson, Esq.

SUBSCRIBED AND SWORN to before me
this 13th day of December 2021.


NOTARY PUBLIC in and
For said County and State



MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Petitioner asserts that the lower court was required to grant Petitioners' Motion for Summary Judgment pursuant to the Graves Amendment, which protects the owner of a rented or leased motor vehicle from being held vicariously liable for harm that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease.¹ The vehicle owner is shielded from liability if it is in the business of renting or leasing motor vehicles and there is no negligence or criminal wrongdoing on the part of the owner.

Ryder is the owner of the tractor that was involved in the subject incident and is in the business of renting motor vehicles. Ryder rented this vehicle to Load 1 Trucking, LLC ("Load 1") and Load 1 hired Tony Stephens ("Mr. Stephens") to drive the vehicle on its behalf. Plaintiff Nicole Limon's ("Plaintiff" or "Ms. Limon") Complaint specifically alleged a claim for negligent entrustment against Ryder for allowing Mr. Stephens to operate its vehicle without performing a safety check. Not only has Plaintiff failed to produce any evidence to support this claim, but this claim is also barred by the Graves Amendment because it attempts to hold Ryder vicariously liable for the actions of its lessee, Load 1, in allowing Mr.

¹ 49 USC §30106.

Stephens to operate the vehicle, without any evidence of independent negligent or criminal conduct by Ryder. Plaintiff's Answering Brief negates her own theory of liability and leaves no genuine issue of fact regarding her claim.

The relief sought herein is this Court's intervention by way of extraordinary writ, requiring the district court to rule that Ryder should be dismissed from this matter under the Graves Amendment.

II.

REASONS TO GRANT THE WRIT ON MANDAMUS

A. Writ Relief is Appropriate Because Defendant Ryder Does Not Have a Plain, Speedy, and Adequate Remedy at Law

Plaintiff argues that Defendant Ryder has an adequate remedy at law because it has not shown irreparable harm would occur if its Petition is denied.² The cases on which Plaintiff relies, however, are specifically related to a motion to stay proceedings under Rule 8 of the Nevada Rules of Appellate Procedure.³ Under that rule, parties must show irreparable harm would occur if the Petition to stay proceeding were denied.⁴ Defendant Ryder's Petition was for a writ of mandamus, not a writ to stay proceedings, therefore the factors provided in Rule 8

² See Nicole Limon's Answering Brief at p. 4–5.

³ See e.g., *Hansen v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 116 Nev. 650, 652, 6 P.3d 982, 983 (2000); *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct. ex rel. Cty. of Washoe*, 124 Nev. 193, 197–98, 179 P.3d 556, 558–59 (2008).

⁴ NRAP 8.

are not relevant here.⁵ The relevant statute states that a writ of mandamus “shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.”⁶ No showing of irreparable harm is required to establish the lack of a speedy and adequate remedy.⁷

The future ability to appeal from a final judgment does not necessarily provide a speedy or adequate remedy. “Whether a future appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings’ status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented.”⁸ The Court in *D.R. Horton* found that a future appeal was not a speedy and adequate remedy when the issue was intended to prevent litigation altogether, stating that “an eventual appeal from any final judgment would be neither a speedy nor adequate remedy.”⁹ Defendant Ryder maintains that an appeal from the final judgment in this case would likewise not be adequate as Ryder seeks to avoid altogether defending against Plaintiff’s claim at trial.

While this Court often declines to hear writ petitions challenging lower court

⁵ See Petition for Writ of Mandamus.

⁶ NRS 34.170.

⁷ See generally, *Williams v. Eighth Jud. Dist. Ct. of State, ex rel. Cty. of Clark*, 127 Nev. 518, 262 P.3d 360 (2011); *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 123 Nev. 468, 168 P.3d 731 (2007); *Min. Cty. v. State, Dep’t of Conservation & Nat. Res.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001).

⁸ See *D.R. Horton, Inc* 123 Nev. at 474–75.

⁹ *Id.*

decisions on summary judgment motions, it is not precluded from doing so.¹⁰ This Court has indicated that it will hear such motions “when either (1) no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule, or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.”¹¹ The remedy of mandamus is available to compel the district court to rule properly if, as a matter of law, a defendant is not liable for any of the relief sought.¹² Defendant Ryder maintains that no issue of fact exists regarding this issue, other than the facts that Plaintiff has invented in opposing this Petition, and that the Graves Amendment provides a clear statutory authority for dismissing the claim.¹³ Defendant also maintains that an important issue of law requires clarification, specifically whether a Plaintiff can invoke an exception to the Graves Amendment by bring a negligent entrustment action against a vehicle lessor while alleging no direct or independent action by that

¹⁰ See *Int'l Game Tech*, 124 Nev. at 197–98; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991)(Whether to consider a writ petition is within this court's discretion.).

¹¹ *Int'l Game Tech*, 124 Nev. at 197–98. See also, *D.R. Horton*, 125 Nev. at 453 (Writ relief is available when “summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification.”)(quoting *Anse, Inc. v. Eighth Judicial Dist. Court*, 124 Nev. 862, 867, 192 P.3d 738, 742 (2008)).

¹² See *State ex rel. Dept. Hwys. v. District Ct.*, 95 Nev. 715, 601 P.2d 710 (1979); *Smith v. Gabrielli*, 80 Nev. 390, 395 P.2d 325 (1964); *Dzack v. Marshall*, 80 Nev. 345, 393 P.2d 610 (1964). *Moore v. Eighth Jud. Dist. Ct. In & For Clark Cty.*, 96 Nev. 415, 416, 610 P.2d 188, 189 (1980).

¹³ 49 USC §30106.

lessor. Therefore, considerations of sound judicial economy and administration weigh heavily in favor of granting Defendant Ryder's Petition.

Plaintiff asserts without basis that the time and expense of trial would remain essentially unchanged if Ryder is forced to defend against this claim at trial.¹⁴ This is not true. Ryder's involvement at trial would require a representative from Ryder to attend the entire trial, a corporate representative of Ryder may be required to testify, and, as Plaintiff has not disclosed any evidence relevant to her claim against Ryder, the parties will presumably be required to address multiple evidentiary issues at the time of trial to address previously undisclosed allegations. This would be a waste of time and resources for both the parties and the court. Defendant Ryder therefore respectfully requests this Court grant writ relief in this matter.

B. Plaintiff's Claim Against Ryder is Barred Under the Graves Amendment Because She Has Not Alleged That Direct Action by Defendant Ryder Caused Her Damages

Plaintiff's Answer mischaracterizes Defendant Ryder's argument as seeking to limit the applicability of the exception to the Graves Amendment to only negligent maintenance claims.¹⁵ Defendant's Petition did not make such an argument or request such a limitation.¹⁶ Defendant's Petition addressed the federal

¹⁴ See Nicole Limon's Answering Brief at p. 5.

¹⁵ See Nicole Limon's Answering Brief at p. 2.

¹⁶ See Petition for Writ of Mandamus.

cases in which courts found the exception to the Graves Amendment applied only to claims that involved direct action by the vehicle owner that directly caused the plaintiff's damages.¹⁷ Negligent maintenance claims are simply an example of such a claim. Defendants do not dispute that a negligent entrustment claim can also be such a claim. Defendants do dispute, however, that Plaintiff's negligent entrustment claim as pleaded involves direct action by Ryder. While Plaintiff continues to title her claim as one for negligent entrustment, Plaintiff has not alleged any direct action by Ryder that would provide an adequate basis to apply the exception to the Graves Amendment to her claim.¹⁸ Ryder did not employ Tony Stephens and did not entrust him with the vehicle.¹⁹ Therefore, Plaintiff attempts to hold Ryder vicariously liable for the alleged entrustment actions of Load 1 Trucking by calling her claim a negligent entrustment claim.

¹⁷ See Petition for Writ of Mandamus at p. 7. See also *Dubose v. Transp. Enter. Leasing, LLC*, 2009 WL 210724, at * 5 (M.D. Fla. Jan. 27, 2009), *Moran v. Ruan Logistics*, No. 1:18-CV-223, 2018 WL 4491376, at *4 (S.D. Ohio Sept. 19, 2018).

Johnson v. Alamo Fin., L.P., No. 6:09-CV-1768-ORL-19G, 2009 WL 4015572, at *3 (M.D. Fla. Nov. 19, 2009), *Guinn v. Great W. Cas. Co.*, No. CIV-09-1198-D, 2010 WL 4811042, at *6 (W.D. Okla. Nov. 19, 2010), *Cioffi v. S.M. Foods, Inc.*, 129 A.D.3d 888, 893-94, 10 N.Y.S.3d 620 (2d Dep't 2015).

¹⁸ See generally, Petition App. Ex. A, Plaintiff's Complaint, Petition App. Ex. E, Plaintiff's Opposition to Defendant Ryder Truck Rental, Inc.'s Motion for Summary Judgment, App. Ex. F, Plaintiff's Ninth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1, Nicole Limon's Answering Brief. See also 49 USC §30106.

¹⁹ See App. Ex. C, Defendant Load 1 Trucking's Answers to Plaintiff's Interrogatories, Petition App. Ex. D, Defendant Ryder Truck Rental Inc.'s Answers to Plaintiff's Interrogatories.

The court in *Carton v. General Motor*, despite applying the broad definition of negligence for which Plaintiff advocates, found that the vehicle owner could *not* be held liable for negligent entrustment because the plaintiff did not show that the vehicle owner was aware that the driver posed an unreasonable risk of harm to others.²⁰ The *Carton* court therefore declined to apply the exception to the Graves Amendment.²¹ Plaintiff Limon has failed to allege or establish that Defendant Stephens posed an unreasonable risk of harm to others or that Ryder was aware of any such risk.²² It is undisputed that Tony Stephens was a properly licensed driver with clean driving record.²³ While Plaintiff requests a broad definition of negligence to be applied, she cannot meet her burden to establish each required element of a negligent entrustment claim. The exception to the Graves Amendment should therefore not be applied to Plaintiff's negligent entrustment claim.

C. The Merits of Plaintiff's Must Be Addressed to Determine the Applicability of The Graves Amendment and Were Addressed in Defendant Ryder's Underlying Motion

Plaintiff asserts that Defendant Ryder improperly addressed the merits of

²⁰ *Carton v. Gen. Motor Acceptance Corp.*, 611 F.3d 451, 458–59 (8th Cir. 2010).

²¹ *Id.*

²² *See generally*, Petition App. Ex. A, Plaintiff's Complaint, Petition App. Ex. E, Plaintiff's Opposition to Defendant Ryder Truck Rental, Inc.'s Motion for Summary Judgment, App. Ex. F, Plaintiff's Ninth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1, Nicole Limon's Answering Brief.

²³ Petition App. Ex. K, Driver's License and Pre- Employment Drug Screening.

Plaintiff's claim in its Petition because it did not specifically request summary judgment on the merits of the claim in its underlying motion. This is not true. Defendant Ryder's Motion for Summary Judgment argued that the Graves Amendment barred Plaintiff's claim against Ryder because "Plaintiff has not established or offered any evidence to suggest any separate negligence or criminal conduct by Ryder, and there is no evidence that any such alleged conduct by Ryder proximately caused Plaintiff's injuries."²⁴ Additionally, in its Reply to its Motion for Summary Judgment, Ryder stated:

Plaintiff failed to produce any admissible evidence establishing that Mr. Stephens was "incompetent, inexperienced, or reckless in the operation of motor vehicles," as her Opposition alleges. Plaintiff has not disputed that Mr. Stephens held a valid commercial driver's license, had a clean driving record at the time of employment, and passed his pre-employment drug test. Plaintiff's general allegation of negligent entrustment, without any factual basis, is not sufficient to oppose a motion for summary judgment. Therefore, summary judgment is appropriate as no genuine issue of material fact exists.²⁵

While Defendant Ryder may not have created a separate heading requesting summary judgment on the merits, the issues are so intertwined, that the Graves Amendment issue cannot be addressed without addressing the sufficiency of Plaintiff's claim.

This issue may be decided as a matter of law because Plaintiff has not

²⁴ See Petition App. Ex. G, Defendant Ryder Truck Rental, Inc.'s Motion for Summary Judgment at p. 6.

²⁵ Reply App. Ex. A, Defendants' Reply in support of its Motion for Summary Judgment at p. 5

alleged any legitimate triable issue of fact to support her claim.²⁶ Plaintiff may not invent issues of fact to preclude summary judgment when she neither presented admissible evidence nor conducted discovery to establish those facts.²⁷ The rental agreement between Ryder and Load 1 Trucking was disclosed in Defendant Ryder Truck Rental, Inc.'s Early Case Conference Disclosure on July 3, 2019.²⁸ Plaintiff served one set of Interrogatories, Requests for Production, and Requests for Admission to Ryder on October 2, 2019, primarily regarding Mr. Stephens' status as an employee of Ryder Truck Rental.²⁹ Ryder denied that Mr. Stephens was an employee of Ryder and denied that Ryder had any knowledge that Mr. Stephens was operating the subject tractor prior to the collision.³⁰ No discovery was conducted regarding what a "safety check" would entail or what such a check would have revealed.³¹ Plaintiff made no allegations that would establish a causal connection between the alleged failure to perform a safety check and the

²⁶ NRCP 56(c); *Wood v. Safeway*, 121 Nev. 724, 731 (2005), *Foster v. Costco Wholesale Corp.*, 291 P.3d 150 (Nev. 2012), *Harrington v. Syufy Enterprises, L.P.*, 113 Nev. 246 (1997).

²⁷ *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) ("The non-moving party's documentation must be admissible evidence, as he or she is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.") (quoting *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993) and *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

²⁸ See Petition App. Ex. H, Register of Actions for Case No. A-19-794326-C.

²⁹ *Id.*

³⁰ See Petition App. Ex. D, Defendant Ryder Truck Rental Inc.'s Answers to Plaintiff's Interrogatories.

³¹ See Petition App. Ex. D, Petition App. Ex. H.

accident.³² Only after Defendant Ryder filed its Motion for Summary Judgment did Plaintiff assert that the subject rental agreement imposed a duty on Ryder for the benefit of the rest of the world and that Ryder breached this duty.

Plaintiff's characterization of Load 1 Trucking's driver, Tony Stephens, as "an inexperienced, reckless, and intoxicated driver" is pure speculation. Mr. Stephens was properly licensed, and Plaintiff has not presented any admissible evidence that Mr. Stephens acted recklessly or was intoxicated at the time of the incident.³³ While a drug test was administered six days after the subject incident, the results of this test have been excluded through Defendants' Motion in Limine as they are irrelevant to Mr. Stephens' condition at the time of the incident.³⁴ Additionally, Plaintiff's reference to Mr. Stephens' status as a felon is irrelevant to issue at hand.³⁵ Plaintiff's lack of evidence of any independent negligence by Ryder speaks to her intention to use her negligent entrustment claim as a vicarious liability claim in disguise. Her claim is therefore barred by the Graves

³² See generally, Petition App. Ex. A, Plaintiff's Complaint, Petition App. Ex. E, Plaintiff's Opposition to Defendant Ryder Truck Rental, Inc.'s Motion for Summary Judgment, App. Ex. F, Plaintiff's Ninth Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1, Nicole Limon's Answering Brief.

³³ Nicole Limon's Answering Brief at p. 10. These statements are allegations that Plaintiff has made against Mr. Stephens without any supporting evidence and are apparently included only for inflammatory purposes.

³⁴ See Reply App. Ex B, Order Regarding Defendants' Motion in Limine.

³⁵ Nicole Limon's Answering Brief at p. 11. Plaintiff seems to suggest that an individual who was convicted of a felony unrelated to his driving ability should not be permitted to work again following his release from incarceration.

Amendment.³⁶

D. Plaintiff's Own Argument Establishes That Ryder Did Not Have a Duty to Investigate Tony Stephens Prior To The Subject Collision.

Plaintiff's entire claim hinges on the rental agreement clause that she claims created a duty for Ryder to conduct a "safety check" on Mr. Stephens before he could operate Ryder's vehicle. Plaintiff's own argument in her Answering Brief negates this very claim.

Plaintiff relies heavily on two Pennsylvania cases, *Roebuck v. Bensing* and *Knecht v. Balanescu*, to establish that the the subject clause in the rental agreement created an assumed duty to investigate sufficient to establish a negligent entrustment claim.³⁷ She further argues that Ryder had or should have had knowledge that Mr. Stephens was operating Ryder's vehicle because the contract required Load 1 Trucking to submit fuel receipts and driver trip logs and that these documents could have been used to identify Load 1 Trucking's drivers.³⁸ The court in *Roebuck*, however, rejected the plaintiff's "convoluted argument" that, "since [the owner] had the driver trip records and fuel receipts from [the lessee] for the preparation of fuel tax returns, these documents could have been used" to

³⁶ 49 USC §30106.

³⁷ *Roebuck v. Bensing*, No. 97-CV-5285, 1999 WL 124462, at *6 (E.D. Pa. Feb. 8, 1999), *Knecht v. Balanescu*, No. 4:16-CV-00549, 2017 WL 4573796, at *11 (M.D. Pa. Oct. 13, 2017). *See also*, Nicole Limon's Answering Brief at p. 7–10.

³⁸ Nicole Limon's Answering Brief at p. 8,11.

identify careless driving habits and imposed a duty on the owner to investigate these habits.³⁹ Such records “have more to do with the operation of the truck itself, and do not establish any basis on which the court can find that [the owner] had control over the employment” of the driver.⁴⁰

Plaintiff asserts that the subject clause in the rental agreement which states “All drivers must be safety checked by Ryder before operating the Vehicle. If Customer changes drivers during rental period, the Customer must arrange for Ryder to safety check the new driver before the new driver is permitted to operate the Vehicle,” was intended to impose a duty on Ryder to investigate all Load 1 Trucking drivers who operated the vehicles leased by Ryder.⁴¹ Plaintiff’s Answering Brief emphasizes that “the lease agreements become important in determining who has the duty to perform safety checks for proper entrustment.”⁴² Particularly, Plaintiff cites to a clause included in the lease agreement in *Roebuck*, which states “CUSTOMER agrees that all Vehicles shall be operated by safe, qualified, properly licensed drivers, who shall conclusively be presumed to be CUSTOMER’s agent, servant or employee only, and subject to its exclusive

³⁹ *Roebuck* at *6.

⁴⁰ *Id.*

⁴¹ See Petition App. Ex. B, Ryder Rental Agreement, Nicole Limon’s Answering Brief at p. 8. Notably, Mr. Stephens was not the original driver listed on the lease agreement. Therefore, by the terms of the contract, the duty was on Load 1 Trucking to arrange a safety check when it changed drivers during the rental period.

⁴² Nicole Limon’s Answering Brief at p. 9.

direction and control,” and notes the court’s decision that, due to this clause, “the lessor had no responsibility regarding the credentials of the lessee's drivers.”⁴³ Plaintiff argues that because the Ryder Lease Agreement includes the “safety check” clause, but does not include the language of the clause from the *Roebuck* lease, Ryder expressly assumed the responsibility of conducting safety checks from Load 1 Trucking.⁴⁴ Plaintiff implied that if Ryder had included a provision similar to the provision in *Roebuck*, Ryder would have been relieved of its duty to investigate.⁴⁵ Plaintiff’s analysis of both lease agreements is incomplete and presents a distorted application of the *Roebuck* court’s findings.

Plaintiff’s Answering Brief failed to acknowledge that the *Roebuck* lease agreement also included a clause allowing the owner to “investigate the driving record of each driver and test such driver with respect to his ability to operate the Vehicle to which he will be assigned,” which is very similar to the clause in the subject Ryder rental agreement.⁴⁶ In *Knecht*, where the lease term was “nearly indistinguishable” from the *Roebuck* lease, this clause was not interpreted as an

⁴³ Nicole Limon's Answering Brief at p. 9. *See also* *Roebuck* at *7

⁴⁴ Nicole Limon's Answering Brief at p. 9. (“Specifically, Defendant Ryder maintained an obligation that ‘[a]ll drivers must be safety checked by Ryder before operating the Vehicle.’ Defendant Ryder never shifted this burden to Defendant Load 1 Trucking in the lease agreement—as others have done. Instead, Defendant Ryder continued to have a duty that all drivers placed into the driver's seat were experienced.”).

⁴⁵ *Id.* 9–10.

⁴⁶ *Roebuck* at *3, Petition App. Ex. B.

assumption of a duty to investigate driver history.⁴⁷ “Even where lessors have retained some modicum of investigative rights, courts have not construed the retention as usurping the responsibility imposed on the employer.”⁴⁸

Plaintiff’s Answer also failed to recognize the last sentence of the clause she cites from the Ryder rental agreement, which states “Customer or driver of the vehicle shall in no event be deemed the agent, servant or employee of Ryder in any manner or for any purpose what so ever.”⁴⁹ A separate clause in the rental agreement specifically required the lessee to allow only safe, properly licensed drivers who were employees or agents of the lessee, subject to the lessees exclusive direction and control, to operate the Ryder vehicle.⁵⁰ These clauses contain essentially the same provisions that the *Roebuck* and *Knecht* courts, and Plaintiff herself, recognized absolve the vehicle owner of any duty to investigate the driving history of the lessee’s drivers. As both Plaintiff and Defendant Ryder agree on this point, no genuine issue of disputed fact exists as to this claim. Ryder

⁴⁷ *Knecht* at *11.

⁴⁸ *Knecht* at *11 (citing *Jerman v. Ins. Co. of N.Y.*, No. 05-CV-5968, 2007 WL 2702816, *3 (E.D. Pa. Sep. 12, 2007)).

⁴⁹ See Petition App. Ex. B.

⁵⁰ See Petition App. Ex. B at p. 8 (“Each vehicle shall be operated only in the ordinary course of business by a properly licensed drivers that are (i) at least one 18 years old; and (ii) your employees or agents and subject to your exclusive direction and control. You will not operate any vehicle (i) in violation of any federal, state, or local rules, laws or regulations [or] (ii) in a reckless or abusive manner (including while using a mobile or electronic device).”).

did not owe Plaintiff a duty to investigate Load 1 Trucking's driver, therefore, Plaintiff's negligent entrustment claim is not viable and does not qualify for the exception to the Graves Amendment.⁵¹ Ryder should be dismissed from the case under the Graves Amendment.

III.

CONCLUSION

Accordingly, for the reasons cited above, Petitioner respectfully requests for this Honorable Court to grant the requested relief.

⁵¹ 49 USC §30106.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Reply Brief (the “Reply”) complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this Reply has been prepared in a proportionally spaced typeface using 14-point Times New Roman.

2. I hereby certify that this Reply complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), this Reply contains less than 7,000 words.

3. I hereby certify that I have read this Reply, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Reply complies with all applicable Nevada Rules of Appellate Procedure, particularly NRAP 28(e)(1), which requires every assertion in a brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Reply is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

...

4. I make this verification on behalf of Petitioners.

Dated this 13th day of December 2021.

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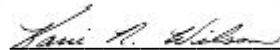
Ryder Truck Rental, Inc.

VERIFICATION

The undersigned is counsel for Petitioner RYDER TRUCK RENTAL, INC. She has read and authored the forgoing Reply Brief, and all factual statements in the Reply are within the affiant's personal knowledge and are true and correct or are supported by citations to the Appendix accompanying the Reply. The Exhibits in the Appendix are true and correct copies of the documents of record in the proceedings in the district court.

Dated this 13th day of December 2021.

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CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on this 13th day of December 2021, I did serve, via Case Management/Electronic Case Filing, a copy of the above and foregoing **PETITIONER RYDER TRUCK RENTAL, INC.'S REPLY BRIEF** addressed to:

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