IN THE
SUPREME COURT OF ILLINOIS
No: 123853

MARY TERRY CARMICHAEL, **Plaintiff,** **vs.** **UNION PACIFIC RAILROAD COMPANY, a foreign corporation; PROFESSIONAL TRANSPORTATION, INC, a foreign corporation, d/b/a PTI; and ACE AMERICAN INSURANCE CO., a foreign corporation,** **Defendants**	**Appellate Court, First Judicial District, Case No: 1-17-0075** **Circuit Court of Cook County, Chancery Division No: 12 CH 38582**
PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI; **Counter-Plaintiff/Defendant,** **vs.** **MARY TERRY CARMICHAEL,** **Counter-Defendant/Plaintiff,** **and** **JESSE WHITE, ILLINOIS SECRETARY OF STATE.** **Counter-Defendant.**	**Trial Judge: Judge Sophia H. Hall**

REPLY BRIEF OF PLAINTIFF-APPELLANT MARY TERRY CARMICHAEL

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DEFENDANT'S STATEMENT OF FACTS

Defendant's Statement of Facts contains errors. For example, defendant states:

> The circuit court recognized that the additional UM/UIM coverage required by 5/8-101(c) was discriminatory — burdening only a narrow segment of commercial vehicle operators to the benefit of only a limited group of passengers. (C806 V4) (A. 6). The court also acknowledged that the statute's legislative history documented that the extraordinary UM/UIM benefits in 5/8-101(c) were enacted by the legislature "at the behest" of plaintiff's labor union. (C806 V4) (A. 6).

Whereas, the trial court's Decision provides the following:

> PTI argues that singling out contract carriers of employees to carry higher under/uninsured motorist insurance than others utilizing such vehicles, is unconstitutional because if the legislature truly wanted to protect those employees who use contract carriers as a part of their employment, it would have required contract carriers of employees to also purchase higher levels of liability insurance coverage. PTI further argues that the legislative history of the statute in question shows that the legislature adopted it "at the behest" of plaintiff's labor union, and that this motivation was the real reason the legislation was passed. (C806 V4) (A. 6).

The circuit court neither recognized that the UM/UIM coverage requirement was discriminatory nor acknowledged that the coverage requirement was enacted "at the behest" of the plaintiff's union. The court merely summarized defendant's argument.

ARGUMENT

I. THE APELLATE COURT INCORRECTLY RELIED ON *Metzger* AND *Fisher* IN FINDING THAT PLAINTIFF DOES NOT HAVE AN IMPLIED PRIVATE RIGHT OF ACTION AGAINST PTI FOR VIOLATING 625 ILCS 5/8-101(c).

Plaintiff would only add that *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455 (1999) and *Metzger v. DeRosa*, 209 Ill.2d 30 (2004) also determined that the plaintiffs were not members of the respective classes for whose primary benefit the statutes were enacted. Particularly, *Fisher* involved the Nursing Home Care Act (Act)

wherein, two employees of a nursing home brought implied private right of actions against their employer for allegedly retaliating against them because they cooperated with the state's investigation of a resident's death. *Fisher* noted that none of the provisions of the Act provided the nursing home employees the right to pursue an action for damages against their employer for violating the Act. Whereas, the Act expressly grants nursing home residents the right to pursue actions for damages.

A. Remedies PTI Refers to Are Either Inadequate, or Unavailable to Plaintiff or Should Not Be Remedies That Plaintiff Should Be Forced to Use

PTI suggests that since the legislature could have enacted an "additional remedy" which would allow a civil action against PTI "but did not do so" "supports a presumption that a civil remedy was deliberately omitted."

PTI further believes that a private civil remedy was not necessary since plaintiff had other remedies available. For the first "remedy," PTI points to the collective bargaining agreement between plaintiff's union and her employer, Union Pacific Railroad (UP). Specifically, the "Off-Track Vehicle Accident Benefits" which obligates the UP to pay certain medical expenses and weekly advances for lost time from work. The railroad has a lien for any amount it has paid regarding medical bills and advances. This bargained for benefit between plaintiff's union and her employer should not be a reason for this Court to decide that an implied private right of action does not exist.

PTI also maintains that plaintiff has benefits available under the Railroad Retirement Act but fails to provide what these benefits are. Moreover, retirement benefits are increased for every month a retiree works past full retirement age. Likewise, benefits are reduced for employees who retire before retirement age.

The foregoing "remedies" are benefits which plaintiff has earned through her

employment with UP. PTI should not be able to avoid a lawsuit for its failure to follow the law just because plaintiff may have these benefits. Moreover, those remedies, if they exist at all, are not the same for all passengers that PTI transports.

Other "remedies" PTI claims are available to the plaintiff are the limits of the liability insurance of the other driver, Dwayne Bell. Plaintiff had received the $20,000 limits of Bell's liability insurance policy. In addition to seeking Bell's policy limits, defendant also suggests that plaintiff go after Bell's personal assets. Not knowing the value of Bell's personal assets, it is not a reasonable move to initiate an action, obtain a verdict, and then go forward with a Citation to Discover Assets which would be a lengthy and costly process.

The last "remedy" PTI claims is available to plaintiff is for her to seek relief from her own automobile insurance policy's UIM coverage. However, defendant is assuming that plaintiff's UIM coverage would be available to plaintiff to recover for the injuries, lost time and medical expense she sustained in a vehicle collision while a passenger in a contract vehicle hired by her employer to transport her from one of her employer's rail yard to another. Plaintiff submits that not all personal automobile policies extend coverage in circumstances such as the foregoing. Defendant also assumes that the UIM coverage of plaintiff's automobile coverage exceeds what is required by law. Certainly, this non-remedy should not preclude a private right of action against PTI.

PTI also cites *Abbasi ex rel. Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 393 (1999) purporting to hold that a private right of action under the Lead Poisoning Prevention Act (410 ILCS 45/1 *et seq.*) would not be implied because the plaintiff, Abbasi, had other remedies available. However, in *Abbasi*, it was readily apparent that a

private cause of action under the Lead Poisoning Prevention Act would be identical to a common law negligence action which the plaintiff pled in a separate count. Plaintiff in *Abbasi* already had an adequate remedy, thus, not meeting the criteria of the fourth factor. *Id*. at 393. The difference between *Abbasi* and the present case is that Abbasi's remedy was a common law negligence claim naming the same party that he brought the implied right of private action against. Whereas, the remedies suggested by PTI do not involve any cause of action against PTI.

PTI also cites *Rekosh v. Parks*, 316 Ill. App. 3d 58 (2d Dist. 2000) noting that *Rekosh* refused to imply a private right of action under the Funeral Directors and Embalmers Licensing Code (225 ILCS 41/1-1 *et seq.*). *Rekosh*, however, did allow plaintiffs' two actions against the funeral home for intentional infliction of emotional distress and for willful and wanton misconduct for interfering with the right of the next of kin to possess and preserve the body of the decedent. The Court also found that the Crematory Regulation Act (410 ILCS 18/1 *et seq.*) "clearly and unambiguously" created a private right of action against the cemetery. *Rekosh*, 316 Ill. App. 3d at 72.

Davis v. Kewanee Hospital, 2014 IL App (2d) 130304, another case cited by PTI, found that the exceptions to the Medical Studies Act (735 ILCS 5/8-2101 and the Health Care Professional Credentials Data Collection Act (Credentials Act)(410 ILCS 517/15(h) did not apply to plaintiff's action against the hospital which was filed after the hospital withdrew its offer of employment to Dr. Davis. Specifically, Davis sought information that the hospital obtained to determine his qualifications. *Id*. at ¶1. The hospital declined to provide this information it received claiming that it was confidential pursuant to the Medical Studies Act and Credentials Act. Davis claimed that the exceptions to the

confidentiality provisions of those Acts require the hospital to disclose the information and that it was not an action for improper disclosure of privileged information. *Davis* had determined *inter alia* that there was no implied right of a private action "because the statute provides a comprehensive enforcement scheme." *Id*. at ¶51. Specifically, the Credentials Act adopted both the Administrative Procedure Act and the Administrative Review Law. Since the Credentials Act adopted the Administrative Review Law, no implied right of a private action could ever be maintained in the circuit court. *Id.* at ¶52; citing *Metzger,* 209 Ill.2d at 12.

Tunca v. Painter, 2012 IL App (1st) 110930, ¶22 another Medical Studies Act case cited by PTI, also misses the mark. Basically, *Tunca* involved an action one doctor brought against another for slanderous statements. The appellate court held, *inter alia*, that a right of action already existed in the form of a common law slander action.

Whereas in this case, without an implied private right of action, the punishment that could be meted out to PTI for violating 625 ILCS 5/8-101(c) is meaningless to plaintiff and does not place her in any better position than if the law never existed.

Many vehicle operators drive their vehicles without obtaining insurance. This is obvious because of legislation requiring motor vehicle operators to also obtain UM/UIM insurance coverage to cover a scenario where the driver who caused the accident had no insurance to compensate those individuals who sustained injuries and/or property damage. Many of these individuals believe they will never be caught because they will not be involved in a vehicle collision. A Class A misdemeanor has a short statute of limitations. Prosecution of a misdemeanor must be commenced within one year and 6 months after its commission. (General Limitations, 720 ILCS 5/3-5). It appears that PTI

escaped jail time and/or a fine for not complying with 625 ILCS 5/8-101(c).

Plaintiff would point out that an implied right of a private remedy to give effect to a particular statute is still the law in Illinois. *Rodgers v. St. Mary's Hospital,* 149 Ill.2d 302 (1992) (implied right for damages for violation of X-Ray Retention Act); *Corgan v. Muehling,* 143 Ill.2d 296 (1991) (implied right of action for nuisance under the Psychologist Registration Act); *Sawyer Realty Group, Inc. v. Jarvis Corp.,* 89 Ill.2d 379 (1982) (implied right of action under Real Estate Brokers and Salesmen License Act); *Kelsay v. Motorola, Inc.,* 74 Ill.2d 172 (1978) (implied right of action for retaliatory discharge for employees who are terminated because they filed a claim under the Workers' Compensation Act); see *Heimgaertner v. Benjamin Electric Manufacturing Co.,* 6 Ill.2d 152, 155 (1955) ("[w]hen a statute is enacted for the protection of a particular class of individuals, a violation of its terms may result in civil as well as criminal liability, even though the former remedy is not specifically mentioned therein"). Neither *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455 (1999) nor *Metzger v. DeRosa*, 209 Ill.2d 30 (2004) overturned this law.

B. An Action Sounding in Tort is not a Condition Precedent for an Implied Right of Action to Exist for Violation of Section 5/8-101(c)

PTI maintains that since *Noyola v. Board of Education*, 179 Ill. 2d 121 (1997) was decided, the injured party must also show that the statutory violation was a proximate cause for said injury in order to prevail in an implied private right of action. PTI further reasons that it was not the proximate cause of plaintiff's injuries, thus there cannot be an implied private right of action. However, *Noyola* provided the following:

> [state courts] view is that conduct violating legislated rules is negligent, and if a statutory violation proximately causes an injury *of the kind the legislature*

> *had in mind when it enacted the statute*, [emphasis added] the offending party is civilly liable for that injury. (*Id*. at 129).

Noyola further noted that the law in Illinois has not changed. Violation of a statute or ordinance designed to protect human life or property is prima facie evidence of negligence. (*Id*. at 129).

> When a legislative provision protects a class of persons by proscribing or requiring certain conduct but does not provide a civil remedy for the violation, the court may, if it determines that the remedy is appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision, accord to an injured member of the class a right of action, using a suitable existing tort action *or a new cause of action* analogous to an existing tort action. [emphasis added].

(*Id*. at 130) *citing* Restatement (Second) of Torts §874A (1979)

In *Rodgers*, a case brought against the hospital for its failure to preserve X-rays that plaintiff maintains were crucial in proving his medical malpractice case against the same hospital which he claimed negligently caused his wife's death, this Court allowed an implied private right of action.

Rodgers also noted the following:

> The threat of liability is a much more efficient method of enforcing the regulation than requiring the Public Health Department to hire inspectors to monitor the compliance of hospitals with the provisions of the Act. (149 Ill.2d at 309)

Likewise, in the present case, the threat that PTI could be personally liable for the UM/UIM coverage of $250,000 per passenger is certainly a more efficient method of enforcing the mandatory UM/UIM coverage than requiring the Illinois Secretary of State to hire extra manpower to ensure that all contract carriers transporting employees in the

course of their employment in a vehicle designed to carry 15 or fewer passengers comply with the mandatory coverage law.

Plaintiff also points to *Corgan v. Muehling,* 143 Ill.2d 296 (1991) (implied right of action for nuisance under the Psychologist Registration Act) wherein this Court held there was an implied right of action for nuisance as a result of defendant representing himself as a licensed psychologist when he, in fact, was not registered or had a valid certificate. *Id*. at 315. Even though the plaintiff in *Corgan* brought actions against the defendant for negligent and intentional infliction of emotional distress, this Court found that plaintiff also had an implied right of action for nuisance pursuant to Section 26 of the Psychologist Registration Act. *Id*. (currently Clinical Psychologist Licensing Act; 225 ILCS 15/25 and 27).

The class of individuals that are identified in the statute presently before the Court are employees being transported by their employer in a vehicle that has the capacity of up to 15 passengers. Plaintiff is a member of this class. She sustained injuries and damages including medical bills and loss wages due to the collision between the vehicle in which she was a passenger and the vehicle driven by a third party. The mandatory UM/UIM coverage of $250,000 for each passenger was designed to prevent or off-set these losses. Public policy of protecting the public pursuant to this statute is fully achieved by securing the payment of damages and injuries plaintiff has sustained. This can only be achieved by allowing plaintiff an implied private right of action.

C. The Meaning Of "a vehicle designed to carry 15 or fewer passengers" Is Clear and Unambiguous and Includes PTI's 6-Passenger Vans.

Defendant concludes that plaintiff's description of the class of persons who are described in 5/8-101, i.e., "employees being transported in a vehicle that has a capacity of

up to 15 passengers" somehow vitiates the clear understanding among the parties of what vehicles are included in 5/8-101. This understanding is shared by the several states and public entities that enforce and comply with the statutes that refer to vehicles "designed to carry 15 or fewer passengers."

The language in 5/8-101 that describes the type of vehicle that the statute applies to is not unique. Many state and federal statutes and regulations state the same or very similar language that is contained in 5/8-101.

In addition to Mississippi,[1] California,[2] Texas[3] and Maryland,[4] we have Minnesota,[5] Virginia,[6] West Virginia,[7] Maine[8] and Oregon[9] and many others. The term "designed to carry" is common place and there is no need to resort to aids of statutory construction. *Davis v. Toshiba Machine Co., America*, 186 Ill.2d 181, 184-85 (1999). The

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[1] (defining passenger motor vehicle as a vehicle "designed to carry fifteen (15) or fewer passengers) (Miss. Code Ann. § 63-2-1(2)

[2] (defining a vanpool vehicle as a vehicle "designed for carrying more than 10 but not more than 15 persons...") (Cal. Vehicle Code 668)

[3] (in which the Regulations Governing Transportation Safety apply to "a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers")(Tex. Transp. Code § 644.054(a))

[4] (Defining passenger car as a vehicle "designed for carrying 10 persons or less") (Md. Code Transp. § 11-144.1)

[5] (Defining "Bus" to mean (1) every motor vehicle "designed for carrying more than 15 passengers including the driver" and used for transporting persons, (2) every motor vehicle that is (i) "designed for carrying more than ten passengers including the driver", (ii) used for transporting persons, and (iii) owned by a nonprofit organization and not operated for hire or for commercial purposes)(Minn. Stat. 168.002 Subd. 4)

[6] ("Passenger car" means every motor vehicle other than a motorcycle or autocycle designed and used primarily for the transportation of no more than 10 persons, including the driver.)(Virginia Statute, Def. 46.2-100)

[7] ((e) "Bus" means every motor *vehicle designed to carry* more than seven ...)(2013 West Virginia Code, Ch.17A, Art.1 Definitions)

[8] (A vehicle "designed to carry 15 or fewer passengers, including the driver,. . .")(Maine Revised Statutes Title 29-A, Ch. 19, § 2309 Exemptions 1 and 2)

[9] (Commercial Motor Vehicle def. (c) "Is designed to transport 16 or more persons, including the driver")(Oregon Vehicle Code Ch. 801.208).

best way to determine legislative intent is to look at the statutory language. *In re Justin M.B.*, 204 Ill.2d 120, 123 (2003). Moreover, one must consider all the language of that portion of the statute to determine the legislature's purpose in enacting the statute. *People v. Taylor*, 221 Ill.2d 157, 162 (2006).

The term "designed for carrying not more than" a certain number of passengers is found elsewhere in the ILCS. Specifically, 625 ILCS 5/1-217 divides vehicles into two divisions, First and Second. *Id*. The major distinction between the two categories, is that vehicles in the First Division are those motor vehicles that are designed for the carrying of not more than 10 persons. The Second Division includes, *inter alia*, those vehicles that are designed for the carrying of more than 10 persons. Examples of First Division vehicles are provided in a guide distributed by the Illinois State Board of Education regarding vehicle use. (https://www.isbe.net/documents/school_vehicle_guidance.pdf)

The guide states that the main concern of the Illinois State Board of Education is the safe transportation of more than 2 million Illinois school age children. In order to do that, the Board had prepared a guide for all the administrators of public schools to assist them in understanding the types of vehicles that are allowed to transport school age pupils. (C 551-565). In this guide, the Board provided examples of First Division vehicles to include cars, station wagons, mini-vans, taxi cabs, medical carrier or medi-car and Suburbans. https://www.isbe.net/documents/school_vehicle_guidance.pdf at p. 1. Obviously, not all these vehicles have a capacity of 10 persons, and, yet the Board considered them to be First Division vehicles. Clearly, the Board, had applied the plain and ordinary meaning of the statutory language of 625 ILCS 5/1-217.

In the present case, PTI would have the Court ignore certain portions of 5/8-101

to narrow the type of vehicles to which the statute would apply. Specifically, PTI would have this Court push aside "or fewer passengers" and only focus on the "designed to carry 15" to determine what type of vehicle this statute is describing. PTI concludes that the statute only applies to vehicles with the capacity of 15 passengers. If that were the case, the statute would not need the "or fewer passengers" language. It is understood and common knowledge that operating vehicles, such as buses, vans, taxis, passenger cars, etc., are not always at capacity while in use. The plain meaning is clear. The vehicles described in 5/8-101 are vehicles of any capacity up to 15 passengers that are used by contract carriers transporting employees such as plaintiff.

D. The UM/UIM Coverage Requirements of 5/8-101(c) Regarding PTI's 6-Passenger Van are not Vague

Defendant complains that the statute does not give a person "of ordinary intelligence a reasonable opportunity to distinguish between lawful and unlawful conduct."(Def's Brief, p. 38). PTI also maintains that the criminal portion of this statute does not adequately define the criminal offense and because so, it invites arbitrary enforcement. *Id*. In support of its claim of inadequacy, defendant revisits the confusion over "designed to carry 15 or fewer passengers." As previously demonstrated, everyone, except PTI gets it. Also, plaintiff pointed to defendant's own "admission" in its answer that that the vehicle involved in the collision was designed to carry 15 or fewer passengers. Defendant maintains that this is not an admission. Plaintiff submits that whether this was an admission or not, it is a showing that PTI understood that its vehicle, which was designed to carry a driver and 6 passengers, was a vehicle that meets the description of a "vehicle designed to carry 15 or fewer passengers."

Defendant continues to argue that the phrase has two reasonable interpretations. But those two interpretations of "vehicle designed to carry 15 or fewer passengers," which includes the one inspired by the defendant, would do away with the necessity of "or fewer passengers" and ignore the plain meaning given by other states and the Illinois Board of Education, which is charged with the welfare and safety of our children.

Defendant pulls out the "rule of lenity" in support of its contention that the court must resolve the ambiguity of the statute in favor of the defendant, since PTI is the party accused of violating the statute. First, as plaintiff clearly has established, there is no ambiguity in the terms of the statute. Secondly, defendant was never criminally charged with the Class A misdemeanor to have standing to seek the application of the rule. Moreover, if the legislative intent is clear, there is no justification for applying the rule of lenity. *People v. Maldonado*, 386 Ill.App.3d 964, 980 (2d Dist. 2008).

The amount of coverage required per passenger is clear and PTI's purposeful attempt to reduce the meaning of the coverage to vagueness cannot be permitted. The amount of insurance is a non-issue. Defendant, once again without corroboration, maintains that the coverage requirement is ambiguous. The insurance question has been addressed before involving coverage for passengers on other common carriers. Unless there is a unique problem in obtaining the required coverage for contract carriers, of which PTI has failed to enlighten the Court, defendant's argument is baseless.

II. 625 ILCS 5/8-101(c) UM/UCM COVERAGE REQUIREMENTS NEITHER VIOLATE THE DUE PROCESS OR THE EQUAL PROTECTION CLAUSES OF ILLINOIS CONSTITUTION OF 1970 OR THE U.S. CONSTITUTION NOR IS SAID STATUTE AMBIGUOUS.

PTI contends that this legislation is unconstitutional on its face because it is special legislation which violates the Illinois Constitution of 1970 and violates the equal

protection clause of both the U.S. and Illinois Constitutions.

Specifically, the special legislation clause of the Illinois Constitution provides the following: "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13. PTI also claims that this legislation runs afoul of the equal protection clause of both the Illinois and U.S. Constitutions, i.e., "No person shall * * * be denied the equal protection of the laws." Ill. Const. 1970, art. I, § 2. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1. Plaintiff maintains that PTI cannot meet the considerable burden of overcoming the statute's constitutionality.

A. Presumption And Burden Of Proof

Generally, there is a strong presumption that a statute is constitutional. *Elementary School Dist. 159 v. Schiller*, 221 Ill.2d 130, 148 (2006), *Crusius v. Illinois Gaming Board*, 216 Ill.2d 315, 324 (2005). This requires the party claiming that the legislation is unconstitutional to rebut this presumption and establish the "statute's constitutional infirmity." *Arangold Corp. v. Zehnder*, 204 Ill.2d 142, 146 (2003), *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill.2d 221, 234 (2005). Likewise, it is the court's "duty to uphold the constitutionality of a statute, if it is reasonably possible to do so." *Elementary School Dist. 159,* 221 Ill.2d at 148.

PTI challenges the constitutionality of this particular statute based on two

grounds, special legislation and equal protection. Both these challenges are generally judged under the same standards. *Crusius,* 216 Ill.2d at 325. Since PTI neither argues, nor could it, that 625 ILCS 5/8-101(c) affects a fundamental right or involves a suspect classification, the litmus test for its constitutionality is the "deferential rational basis test." *Id.* at 325. This means that if the classification the statute establishes is related to a legitimate state interest, it passes constitutional muster. *Id*. If the "court can reasonably conceive of any set of facts that justifies distinguishing the class the statute benefits from the class outside its scope, it will uphold the statute." *Id.* at 325 *citing In re Estate of Jolliff*, 199 Ill.2d 510, 520 (2002). "A legislative classification must be upheld if any set of facts can reasonably be conceived which justify distinguishing the class to which the statute applies from the class to which the law is inapplicable." *Burger v. Lutheran General Hosp.*, 198 Ill.2d 21 (2001) *citing Miller v. Rosenberg*, 196 Ill.2d 50, 59 (2001).

B. 625 ILCS 5/8-101(c) Passes The Two-Part Special Legislation Test

Defendant first points to the Illinois House Transcript (S. R. 166-167) as the smoking gun for partisan legislation that conferred a special benefit for railroad employees at the cost of burdening the contract carriers such as defendant. Ignoring for the moment that defendant, without any corroboration, assumes that the total discussion of this legislation is contained in the few pages of transcript it cites, defendant is unable to refute the legitimate rationale of such legislation and has failed to demonstrate that this law confers a special benefit to railroad employees in this state. Plaintiff has cited the statements of Senator Munoz which he made at the third reading and final vote in the Senate of HB 2510 and will not repeat them. Clearly, this law places railroad workers on equal footing with non-railroad employees that are transported from one location to

another by their employer.

Simply stated, as plaintiff is not covered under the Illinois Workers' Compensation provisions. Any other worker in Illinois would be covered under this statute if that worker sustained any injury under like circumstances. As stated before, plaintiff is covered only under the Federal Employers' Liability Act (FELA) 45 U.S.C. §§ 56, a federal law that exclusively covers railroad employees injured at work. Since FELA is a negligence statute, defendant railroad is only liable if it were negligent. Since plaintiff's employer was found, to be blameless in the underlying case, plaintiff must rely on the limited amounts of coverage of the culpable party or the uninsured/underinsured provisions of the insurance coverage of PTI. Prior to 625 ILCS 5/8-101(c), plaintiff, as a passenger, would only have available the $20,000 minimum coverage that the driver of the other vehicle involved in the collision had and PTI would get off scot-free since it claimed and still claims that it only has to have $20,000/$40,000 Uninsured/Underinsured coverage. This inadequate remedy for a person injured while about her master's business is the rationale for such legislation. It is puzzling why defendant failed to explain why the foregoing reasons plaintiff, and the Illinois General Assembly, have given for enacting such legislation was arbitrary.

PTI further claims, without any corroboration, that motor vehicle operators, like defendant, had no say in this legislation. Notwithstanding the relevance of this conclusion, the legislation places the defendant in the same shoes as all other contract carriers that provide passenger service to employees including railroad employees. Thus, the increase in the cost of doing business is the same for all and they can pass the costs onto the railroads. This was expected and probably the reason why the railroads'

lobbyist, Association of American Railroads, was opposed to such legislation. If the Court can conceive circumstances that would justify distinguishing the class of individuals that benefit from the legislation from those that do not, the classification would be constitutional. *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill.2d 12, 23 (2003).

A cursory review of the findings this Court has made in cases presented to it involving claims of special legislation and denial of equal protection is instructive.

In re Estate of Jolliff, 199 Ill. 2d 510 (2002), this Court reversed the circuit court's order that found portions of the Probate Act of 1975 755 ILCS 5/18-1.1 unconstitutional. Mr. Jolliff was separated from his wife at the time he sustained injuries in a motor vehicle accident in 1977. *Jolliff,* 199 Ill.2d at 513. His sister was appointed his conservator and watched over him until his death in 1999. *Id*. She collected conservator and helper fees from Jolliff's guardianship estate. He died intestate and his estranged wife filed for letters of administration. One of their daughters was appointed independent administrator of Jolliff's estate. Jolliff's sister filed a statutory custodial claim pursuant to the § 18-1.1 of the Probate Act. *Id.* at 514. The daughter who was appointed administrator sought dismissal of the claim contending that § 18-1.1 violated certain constitutional provisions. *Id*. at 514. The circuit court agreed and found that § 18-1.1 violated both special legislation clause and the equal protection clause of the State constitution. Section 18-1.1 basically provided an immediate family member standing to make a claim against the estate of the decedent, if the decedent was disabled and the family member making the claim had personally cared for decedent for at least three years. An immediate family member included a spouse, parent, sibling or child. *Id*. at 515-16. Specifically, the trial court found, *inter alia*, that because the claims could only be made by a spouse, parent,

brother, sister or child and not a niece, nephew, grandchild or friend who provided the same care for the same period of time it was a denial of equal protection.

On review, *Jolliff* applied the two-part test to determine if the legislation discriminates in favor of one group over another. If so, whether the differences between the groups are arbitrary. *Jolliff,* 199 Ill.2d at 519. Since this Court observed that the legislation did not affect fundamental rights or created a suspect classification, it applied the "deferential rational basis test" which is a litmus test to determine whether the classification is rationally related to a legitimate government interest, keeping in mind that the legislature is given incredible lee-way in making these classifications. *Id*. at 520. *Jolliff* delved into the legislative history of the Bill containing § 18-1.1, including the governor's amendatory veto criticizing this portion of the Bill and its "serious inconsistencies and ambiguities" making it "inequitable and unworkable, and will lead to complex probate litigation." *Id*. at 521. Notwithstanding the Governor's criticisms and suggestions, the General Assembly passed the Bill. *Jolliff* noted that there is a presumption that the legislature acts rationally when it enacts legislation. *Id*. This Court concluded that the classification is rationally based on the legislative goal of encouraging immediate family members to care for disabled relatives. Unlike *Jolliff*, in the present case, this Court does not have to review the legislative history to ferret out the reason for the classification since it is apparent from the face of the statute.

Crusius v. Illinois Gaming Board, 216 Ill.2d 315 (2005), found that § 11.2(a) of the Riverboat Gambling Act 230 ILCS 10/11.2(a) did not violate the special legislation clause of the Illinois Constitution. This legislation basically allowed a holder of a riverboat gambling license that was not conducting riverboat gambling on January 1,

1998 to apply for renewal and relocation with the Illinois Gaming Board which must grant the application. Even though only one licensee fit the group classification, this Court upheld the legislation finding that the classification is rationally related to a legitimate state interest. That interest, as stated in the Act, was to assist in the" economic development and promoting Illinois tourism and by increasing the amount of revenues available to the State to assist and support education." *Crusius*, 216 Ill.2d at 327. *Crusius* partially quoting *Shields v. Judges' Retirement System*, 204 Ill.2d 488, 497 (2003), noted the following: "It is not our place to second-guess the wisdom of a statute that is rationally related to a legitimate state interest, contentious though that statute may be. 'It is the dominion of the legislature to enact laws and it is the province of the courts to construe those laws." *Id.* at 332.

In *Elementary School Dist. 159 v. Schiller*, 221 Ill.2d 130 (2006), this Court found that legislation involving detaching vacant property from one school district and annexing it to another was not special legislation. The pertinent law involved § 7-2c of the School Code 105 ILCS 5/2-2c which provides, *inter alia*, that any contiguous portion of vacant land located in one elementary school district may be detached and annexed to an adjoining elementary school district, and any contiguous portion of vacant land located in one high school district may be detached and annexed to an adjoining high school district upon petition if the following conditions are met: 1) The land cannot be more than 160 acres and located in an unincorporated area of a county populated by 2,000,000 or more inhabitants; 2) As of the date the legislation was enacted, the land is adjacent to a municipality that is wholly outside the elementary or high school school district from which the land is to be detached; and, 3) The land is located totally within

boundaries of adjoining elementary or high school district to which the land is to be annexed. Other restrictions existed including the one-day window in which to have the petition filed and pending. Because of these restrictions and effective date of the legislation, only one entity was the beneficiary of the law. This Court first determined if the statute provided a special benefit upon one and excluded others who were similarly situated. No other similarly situated entities were found.

Citing three other cases wherein this Court upheld the law that affected only one entity, *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221 (2005)(law affecting only Illinois Bell); *Crusius,* 216 Ill.2d 315 (2005)(law applying only to one riverboat gambling licensee) and *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357 (1985)(legislation that applied only to Wrigley Field). We are reminded that just because the law affects only one entity does not make it invalid under the special legislation clause. *Elementary School Dist. 159,* 221 Ill. 2d at 148. Moreover, Illinois law of requiring minimum coverage on motorists generally along with mandatory uninsured coverage has already been established.

C. A General Law Would Not Achieve the Legislative Purpose of 625 ILCS 5/8-101(c)

625 ILCS 5/8-101(c) accomplishes the goals set by the General Assembly as expressed by Senators Munoz and Bamke at the Third Reading and final vote of May 16, 2005. (C 697-698). This law applies to all contract carriers who provide transportation to passengers who are working. These carriers are providing a service to the employers of these passengers. Unfortunately, these employees neither have a voice in contractual agreement nor the right to require the carrier to have sufficient uninsured and underinsured vehicle coverage to cover their damages which include wage loss, medical

bills and injuries they sustain while being transported from one site to another as directed by their employer. Again, PTI suggests that 625 ILCS 5/8-101(c) was solely a result of one party, supposedly, the employees' union, having more "political power" than all the employers in Illinois that hire carriers to transport their employees from one job site to another. Obviously, if all contract carriers follow the law and maintain the required uninsured and underinsured vehicle coverage, none of them are at a disadvantage. They all incur the same cost of doing business and consider those costs when negotiating contracts with the employers. Certainly an employee who is merely following his/her employer's orders should not be left without a remedy if that employee/passenger sustains injuries as a result of a motor vehicle accident which he did not cause.

Based on the foregoing, plaintiff submits that 625 ILCS5/8-101(c) is not unique legislation. Illinois, as well as other states, have recognized the need for mandating insurance coverage for those passengers that are being transported from one location to another at the behest of their employer by contracted carriers hired by the employer. The UM/UIM coverage requirement serves a legitimate state interest and clearly meets the constitutionality litmus test of the equal protection and special legislation provisions of the both Illinois and U.S. Constitutions.

CONCLUSION

For the foregoing reasons, plaintiff prays that Illinois Supreme Court reverse the decision of the Appellate Court and remand this case to the Circuit Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 341(c), I certify that this Brief conforms to the requirements of Rules 341(a) and (b). The length of this Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service is 20 pages.

Dated: April 3, 2019

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IN THE
SUPREME COURT OF ILLINOIS
No: 123853

MARY TERRY CARMICHAEL, **Plaintiff,** **vs.** **UNION PACIFIC RAILROAD COMPANY, a foreign corporation; PROFESSIONAL TRANSPORTATION, INC, a foreign corporation, d/b/a PTI; and ACE AMERICAN INSURANCE CO., a foreign corporation,** **Defendants**	**Appellate Court, First Judicial District, Case No: 1-17-0075** **Circuit Court of Cook County, Chancery Division** **No: 12 CH 38582**
PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI; **Counter-Plaintiff/Defendant,** **vs.** **MARY TERRY CARMICHAEL,** **Counter-Defendant/Plaintiff,** **and** **JESSE WHITE, ILLINOIS SECRETARY OF STATE.** **Counter-Defendant.**	**Trial Judge: Judge Sophia H. Hall**

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on April 3, 2019, we electronically filed with the Clerk of the Supreme Court, through eFileIL, Reply Brief of Plaintiff-Appellant Mary Terry Carmichael, Notice of Filing and Proof of Service, true and correct copies of which are attached and hereby served upon you.

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PROOF OF SERVICE

I, John S. Bishof, Jr., certify that I caused copies of the foregoing documents, Reply Brief of Plaintiff-Appellant Mary Terry Carmichael and Notice of Filing to be served upon the following via email on April 3, 2019:

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Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth herein are true and correct.

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