NO. 126249

IN THE
SUPREME COURT OF ILLINOIS

Thomas Roberts and Diane Roberts, Plaintiffs v. Alexandria Transportation, Inc., et al. Defendants	)	Certif. 7th Cir. Federal Court, Seventh Circuit 19-2395, 19-2414
Alexandria Transportation, Inc., et al. Third-Party Plaintiffs-Appellants, Cross- Appellees, v. Safety International, LLC, Third-Party Defendant-Appellee, Cross- Appellant	)	

On order agreeing to answer question certified by the
7th Circuit Court of Appeals 19-2395, 19-2414

REPLY BRIEF OF APPELLANTS/DEFENDANTS/THIRD PARTY PLAINTIFFS, ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC

BEST, VANDERLAAN & HARRINGTON
Lori A. Vanderlaan, Bar No. 6230432
Wade T. Shimer, Bar No. 6297618
Attorneys for Third-Party Plaintiffs-Appellants
25 E. Washington Street, Suite 800
Chicago, IL 60602
312-819-1100
lvanderlaan@bestfirm.com
wshimer@bestfirm.com
SERVICE ONLY at eservice@bestfirm.com

E-FILED
2/9/2021 2:50 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS and POINTS AND AUTHORITIES

ARGUMENT

The clear and unambiguous language of the Illinois Contribution Act, heretofore the Act, and specifically 740 ILCS 100/3, heretofore "Section 3", demands that the adjudication liability allocation/obligation of a contribution defendant such as E-K, who has been dismissed with prejudice pursuant to a good faith finding, be deemed uncollectable. Rather than focusing on the statutory text, the near entirety of Safety's response avoids and ignores both the language of the Act and the existence of Section 3's exception, wherein joint tortfeasors in contribution are required to share pro rata, the uncollectable obligation of another tortfeasor. Rather than addressing the direct and unambiguous language of Section 3, Safety has attempted to divert this Court's attention to cases that are neither analogous nor helpful in defining what constitutes an uncollectable obligation. Moreover, the basis for Safety's erroneous belief, that finding E-K's obligation as uncollectable would dissuade settlement, actually supports the Alex Parties position to the contrary. Lastly, equal protection under the law must mean equal treatment of all parties under the Act thereby requiring a sharing of E-K's uncollectable obligation under the statute.

For all of these reasons, this Court must find that the obligations of settling tortfeasors/contribution defendants, as determined by a jury in allocating fault, are uncollectable and must be reallocated on a pro rata basis to the remaining tortfeasors under Section 3. Thus E-K's liability of 75%, as determined by the jury, must be found to be an obligation which is uncollectable and thereby reallocated to the Alex Parties and Safety equally.

I. THE ACT'S PLAIN AND ORDINARY LANGUAGE, LEGISLATIVE HISTORY AND PUBIC POLICY GOALS ALL MANDATE A BROAD READING OF THE TERM UNCOLLECTABLE THAT WOULD INCLUDE APPLICATION TO THE OBLIGATIONS OF SETTLING TORTFEASORS/CONTRIBUTION DEFENDANTS

The plain and ordinary meaning of the term uncollectable as used in Section 3, as well as reading the statute as a whole, makes it clear that a fact finder's determination of the liability allocation/obligation of a settling tortfeasor/contribution defendant is uncollectable. Not only does the term "uncollectable" speak for itself as to its clear and unambiguous meaning, but the statutorily proscribed mechanism for a good faith settlement and the discharge of a settling defendant's liability to any other tortfeasor in contribution makes it crystal clear that said tortfeasor's adjudicated liability obligation is uncollectable pursuant to Section 3. Moreover, the Act's legislative history likewise makes the term uncollectable as one embodying a broad inclusion of obligations of good faith settling tortfeasors/contribution defendants whose liability allocation/ obligation as determined by the fact finder is not recoverable by other joint tortfeasors.

Safety has failed to even address the legislature's intent or the clear and unambiguous meaning of the term uncollectable. Clearly, the legislature's intent included the reallocation provisions of Section 3. Safety's failure to even address this issue should speak volumes as to the strength of the Alex Parties' arguments and the weakness in Safety's attempt to oppose reallocation as to the uncollectable adjudicated liability allocations/obligations of settling tortfeasors/contribution defendants, including E-K.

A. Safety's Avoidance Of The Plain Meaning Of The Term Uncollectable Constitutes As A Concession That The Language Requires No Additional Definition

When the Court is faced with an issue of statutory construction, a Court's primary objective is to ascertain and give effect to the legislature's intent. *Oswald v. Hamer*, 2018 IL 122203, 10 (2018). In this Court's own words, "all other rules of statutory construction are subordinate to this cardinal principle." *Id.* The most reliable indicator of legislative intent is the plain and ordinary meaning of the statute itself. *Van Dyke v. White*, 2019 IL 121452, 46 (2019). When the statute contains undefined terms, it is appropriate for a Court to utilize a dictionary to ascertain the term's plain and ordinary meaning. *People v. McChristian*, 2014 IL 115310, 15 (1st Dist. 2019).

Here, the legislative intent to require reallocation among remaining tortfeasors of a good faith settling contribution defendant's liability is clear and plain under Section 3. Meriam-Webster Dictionary defines "uncollectable" as follows:

> **Uncollectible: not capable of, or suitable for being collected: not collectible**
>
> Uncollectible, 2020, In Merriam-Webster.com, http://www.merriam-webster.com/dictionary/uncollectible

Thus, the meaning of this term and its implementation under the Statute is clear and unambiguous and includes the circumstances where the obligation of one party, as determined by a jury, could not contribute to or be collectable by another party in contribution. The present case features this exact circumstance as E-K, a good faith settling contribution defendant, has an obligation of 75% liability for the Plaintiff's damages, but where said obligation has been rendered immune to the Alex Parties' right to collect in contribution through E-K's good faith dismissal with prejudice.

Safety's response presents no discussion of the Statute's plain language and fails to provide any explanation as to why this Court needs to look beyond the statutory text in order to understand what the term uncollectable means. The basis for this neglect is the unavoidable truth that the term "uncollectable" is not ambiguous or requiring explanation and that it applies to the uncollectable obligations of good faith settling joint tortfeasors, like E-K.

Instead of addressing the clear and unambiguous statutory language which reflects the legislature's intent, over and over, Safety's response demands that this Court uphold the Act's statutory language that no party in contribution should be required to pay an amount more than its pro rata liability. At the same time, Safety commands that this Court ignore the statutory exception that was created pursuant to Section 3 of the Act. Safety cannot have it both ways. Statutes are to be read as a whole and Safety's failure to address the very language of the statute itself serves as an overwhelming concession that no contrary explanation for the meaning of uncollectable can be presented. Under the principle of statutory construction in giving the Act's terms their plain and ordinary meaning, this Court's analysis should end with the language itself. Such an analysis undisputedly requires a finding that the obligations of a party, whose contribution obligation has been precluded pursuant to a good faith finding but who is later adjudged to have a share in the pro rata liability amongst all tortfeasors, must qualify as an uncollectable obligation.

Ironically, the easiest way for Safety to defeat the claims of the Alex Parties would be to provide a single example of how any party could collect in contribution against E-K for the liability obligation assessed to it by the jury. Safety's failure to provide such an example to any Court, including this one, is telling that such a recovery cannot occur. This failure by example

demonstrates that E-K's obligation is in fact uncollectable and must be treated that way pursuant to the plain and ordinary meaning of Section 3 of the Act.

B. The Legislative Intent As To The Equitable Goals Of The Contribution Act Require That E-K's Obligation Be Deemed Uncollectable

This Court has recognized that "the Contribution Act seeks to promote two important public policies—the encouragement of settlements and the equitable apportionment of damages among tortfeasors." *Johnson v. United Airlines*, 203 Ill. 2d 121, 135, 784 N.E.2d 812 (2003) (citing *Dubina v. Mesirow Realty Development, Inc.*, 197 Ill. 2d 185, 193–94, 756 N.E.2d 836 (2001), and *In re Guardianship of Babb*, 162 Ill. 2d 153, 642 N.E.2d 1195 (1994). Section 3 is clearly written in furtherance of those goals, and particularly the joint tortfeasors' equitable pro rata sharing of an uncollectable obligation of the settling tortfeasor's/contribution defendant's liability. Indeed, this provision of Section 3 strikes directly at the heart of the equitable goals of the Act. As discussed below, Safety is concerned only about what is fair to Safety. But equitable goals under the Act do not focus on one tortfeasor, but all joint tortfeasors. Thus, equitable sharing between joint tortfeasors in the uncollectable obligation of a joint tortfeasor/contribution defendant is a clear and unequivocal purpose of the Act. As the Act itself discharges the contribution liability of a settling tortfeasor/contribution defendant to other tortfeasors, there can be no doubt that the legislature intended that the liability of parties who have been made immune by way of a good faith settlement is an uncollectable obligation that must be equitably shared among all joint tortfeasors through Section 3 reallocation.

C. The Legislative History Requires A Broad Inclusive Reading Of Joint Tortfeasors Who Are Deemed Uncollectable

The Illinois Legislature was clear and deliberate when it created the uncollectable exception found in Section 3 of the Act. In an attempt to distinguish *Illinois Tool Works*, 345

Ill.App. 3d 645, 802 N.E.2d 1228 (1st Dist. 2003), Safety has asked this Court to narrowly interpret Section 3's language and the term uncollectable to apply only to those cases that involve a specific statutory cap, like the Worker's Compensation Act. However, the legislature never intended that Section 3 and the Act, as a whole, to have such a narrow understanding and application. Rather, the legislature's use of the term uncollectable was calculated and placed into Section 3 of the Act to cause broad application. Had the legislature intended the application to be narrow and as Safety has suggested, it would have been written as, "However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is **statutorily capped."** Contrary to Safety's belief, the statute was not written that way, rather as discussed below, the broad term uncollectable was included so application could be given to all situations where a party's obligation is uncollectable by statute or otherwise.

In that regard, the legislative intent to give broad application to the Section 3 reallocation provision for uncollectable obligations of tortfeasors can be gleaned from the Act's legislative history. As the Alex Parties have shown, Section 3 was initially written narrowly with the exception applying only to situations of insolvency. See Appellant's Appendix to Opening Brief, A65-66. The term insolvency is typically related to bankruptcy and the ability for one to pay their debts. See Insolvency, 2020, In Merriam-Webster.com, http://www.merriam-webster.com/dictionary/insolvency (inability to pay ones debts). During the drafting period, Section 3 was molded and the language was changed from "insolvency" to "uncollectable." See Appellant's Appendix to Opening Brief, A65-66. The only explanation for this change is that the legislature meant for the exception to be applied broadly, not just to situations involving insolvent debtors, but to all categories where recovery by one tortfeasor for another's

contribution liability is precluded. This is notable, because had the change **not** been made, then Section 3 would apply to even less parties, including those with Worker's Compensation caps, as in *Illinois Tool Works.* Clearly, Safety is attempting to read exceptions into Section 3's use of the word "uncollectable", for which the legislature did not provide and that are contrary to the clear and unambiguous meaning of the Act, its legislative history and equitable goals.

Accordingly, for the above reasons, that the obligations of settling tortfeasors/contribution defendants, as determined by a jury in allocating fault, are uncollectable and must be reallocated on a pro rata basis to the remaining tortfeasors under Section 3. Thus E-K's liability of 75%, as determined by the jury, must be found to be an obligation which is uncollectable and thereby reallocated to the Alex Parties and Safety in accordance with their respective pro rata share of liability.

II. ILLINOIS CASE LAW PROVIDES FOR REALLOCATION OF THE LIABILITY OF SETTLING TORTFEASORS

Case law likewise makes it clear that Section 3 of the Act furthers the overriding goals of the Contribution Act as to the equitable sharing of liability among joint tortfeasors, which includes reallocation of the settling tortfeasor's/contribution defendant's uncollectable obligation. This is demonstrated by the cases of *Illinois Tool Works* and also *Truszewski*,

A. Illinois Tool Works Provides That Joint Tortfeasors Whose Contribution Liability Has Been Statutorily Limited Are Uncollectable As To Their Liability That Exceeds The Statutory Limitations

The Alex Parties have provided the Court with existing law that has set forth Section 3's reallocation in circumstances nearly identical to this case. As discussed at length in the Appellant's Brief, in *Illinois Tool Works*, a Contribution Plaintiff went to trial on a contribution action against the contribution defendant. See Generally, *Illinois Tool Works v. Independent Machine Corp.*, 345 Ill.App. 3d 645, 802 N.E.2d 1228 (1st Dist. 2003). The other contribution

defendant, who happened to be the plaintiff's employer, had settled out in good faith and had been dismissed in exchange for a cash payment and waiver of its lien. *Id.* The Court, at the contribution trial, determine the obligation of the settling tortfeasor's/contribution defendant's liability as well as the liability obligation of the two remaining joint tortfeasors. *Id.* at 648. At trial, the Court found that the obligation of the settling tortfeasor/contribution defendant (employer), which was in excess of its statutory cap, was not collectable under Section 3 of the Act. See Generally, *Id.* In fact, in *Illinois Tool Works,* the Appellate Court stated directly, "We agree with Illinois Tool Works that the difference between the amounts Tapecoat (the employer) paid in settlement and the monetary value of its 35% fault attribution is, indeed, uncollectable." *Id.* at 655. Of note, Tapecoat had obtained a good faith finding, as had E-K in the present case.

Illinois Tool Works serves as an example of how statutory enactments which make a contribution defendant's obligation immune to recovery as to its adjudged liability/fault percentage, serves to render the obligation of that party as uncollectable. The case presenting itself to this Court in this appeal is no different. Due to E-K being dismissed with prejudice as a contribution defendant pursuant to a statutorily required good faith finding, the Act specifically provides that it is "discharged from all liability for any contribution to any other tortfeasor". 740 ILCS 100/2(d). Thus, it follows that obligation flowing from its liability share, or in the words of *Illinois Tool Works*, its fault attribution, is indeed uncollectable.

As referenced, Safety has attempted to distinguish *Illinois Tool Works* due to its argument that uncollectable should only apply to situations where recovery is statutorily limited. See "E-K did not have the benefit of a statutory cap on the amount it owed." Appellee's Response at 7. However, this construction is reading an exception into the Act that the legislature did not statutorily create. In fact, to the contrary and as discussed above, the legislature broadened the

group of whose liability obligation must be reallocated by changing the terms from "insolvent" to those who are "uncollectable." Moreover, Safety's attempt to rewrite Section 3 denies the existence and effect of the statutorily required good faith finding to E-K's settlement with the Plaintiff. In contrast to Safety's position, E-K's ability to contribute to the jury's apportionment of fault was actually statutorily capped. The moment the District Court found E-K's settlement with the Plaintiff to be in good faith and dismissed the Plaintiff's claims with prejudice as well as any contribution claim, any obligation E-K owed in contribution was statutorily capped by the amount paid in settlement, or otherwise extinguished. In this light, even under Safety's own narrow interpretation of *Illinois Tool Works*, E-K's obligation, as determined by the jury, would qualify as uncollectable.

Thus, *Illinois Tool Works* provides an on-point example of how a party's obligation can become uncollectable in contribution by demonstrating a circumstance where a party's full liability obligation is not recoverable because of a statutory scheme. Defendants who have settled in good faith under the Act and have been discharged from liability in contribution to other tortfeasors, such as E-K, are similarly immune and their liability obligation as determined by the jury in a post plaintiff settlement contribution action must be designated as uncollectable under the same theory.

B. Neither *Truszewski* Nor The Other Cases Relied Upon By Safety Address The Issue Of Uncollectable Obligations Of Tortfeasors/And Contribution Defendants And Reallocation

In contrast to Safety's claim, the language of the *Truszewski v. Outboard Motor Corp.*, 292 Ill.App.3d 558, 685 N.E.2d 992 (1st Dist. 1997) opinion is actually in line with the Alex Parties position. The *Truszewski* Court stated the following as to Lester which was the settling party that the Court held was inappropriately not placed upon the jury verdict form;

"Accordingly, Lester's presence on the jury form **could not have caused Lester to pay again.**" *Id.* at 565 (emphasis added). Thus, the *Truszewski* Court acknowledged that had Lester been appropriately placed upon the jury form then it would have been uncollectable, which is the exact point the Alex Parties are raising with this appeal. Pursuant to this direction, the Court must find in a similar fashion, that E-K could not have been caused to pay again and therefore its fault apportionment and/or contribution liability obligation, as determined by the jury, was uncollectable pursuant to Section 3 of the Act.

Safety's attempts to rely upon *Truszewski* in its argument against reallocation are unpersuasive. First, Safety suggests that finding E-K as uncollectable "would be inconsistent with *Truszewski* precedence" and "overturn 20 years of reliance on the case." See Brief of Appellee at page 2. Safety alleges, incorrectly, that *Truszewski* is "controlling Illinois precedence" on the subject of this appeal. First, the Alex Parties disagree that any decision of an Appellate Court is controlling law as to this Court. Moreover, the issue before this Court is whether the jury adjudicated obligation of a contribution defendant, who has settled in good faith and been dismissed pursuant to a good faith finding, qualifies as uncollectable under Section 3 of the Act. Undisputedly, the *Truszewski* Court never discussed or applied Section 3 of the Act and further did not define or utilize the term uncollectable. See Generally, *Id.* The only issue *Truszewski* determined was whether settling parties should be placed upon the jury form at all. See Generally, *Id.* The *Truszewski* Court never got to the issue of what happens as to reallocation of the settling defendant's liability obligation if a jury should apportion fault to the same. Thus, to claim that *Truszewski* is somehow controlling on this Court's decision is patently false.

However, *Illinois Tool Works* does address reallocation. So too does Section 3 of the Act. Thus, despite Safety's claims, the actual result of this Court correctly categorizing the jury adjudicated fault/contribution obligation of a settling tortfeasor/contribution defendant, such as E-K, as uncollectable will not have the effect of overturning 20 years of reliance on case law, but instead will be consistent with both statutory and case law that directly addresses the uncollectable obligations of joint tortfeasors.

Moreover, what the *Truszewski* Court was actually attempting to determine was the best means to allow a jury in contribution to most accurately determine the correct liability shares of the remaining defendants. See Generally, *Id.* In finding that the settling party must be placed on the verdict form, the Court noted that consideration of both parties and nonparties is required to equitably determine the total degree of fault. *Id.* at 541. Safety also seems to suggest that if reallocation is permitted, then the purposes of putting settling defendants on the verdict form under *Truszewski* is eviscerated because whether the settling defendant is or is not on the verdict form will make no difference as to ultimate apportionment of fault between remaining tortfeasors. Safety's assertion could not be more wrong. In this case, the jury found the construction company, E-K, the most culpable party (75% fault). If E-K was not on the verdict form, it is very possible that Safety's liability allocation would have been extremely high because Safety had the contract with E-K to provide for safety and it was the only other party the jury could look to for the negligence of the flagger. The Alex Parties liability would likely have been no different at 15%. Thus, instead of 10% liability, Safety could have been assessed with 85% liability, which is nearly 46% more than what its pro rata share of liability will be with reallocation.

This Court should not be fooled by the disingenuous nature of Safety's argument. Safety insisted that E-K be placed on the verdict form. It did so because it knew having another party on the verdict form would potentially reduce its overall exposure. However, it does not get to have its cake and eat it too. In other words, it does not get to argue for E-K to be on the verdict form and then contend that the Alex Parties, who were adjudged only 5% more liable than Safety, be on the hook for all of E-K's liability. That flies directly in the face of the equitable goals of the Act and particularly Section 3.

Lastly, Safety misidentifies *Ponto v. Levan* as a case that addresses how the application of Section 3 of the Act should be done narrowly. Safety's own analysis illustrates the fallacy of this claim wherein Safety states, "In Ponto the Plaintiff attempted to collect a judgment from the third party defendant…" See Safety's Response page 11. In its analysis, the *Ponto* Court noted that the Plaintiff was attempting to collect against a third-party defendant that it did not have a direct claim against and against whom it had failed to timely file a claim under the applicable statute of limitations. *Ponto v Levan,* 972 N.E.2d 772, 789 (2nd Dist. 2012). Plaintiff was trying to collect against the third-party defendant because the direct defendant had not satisfied its judgment to the plaintiff. *Id.* at 780. The plaintiff in *Ponto*, unlike here, had no claim, much less a claim for contribution, against a settling defendant that had been discharged by way of a good faith finding. *Id.* Moreover, the direct defendant had not paid more than its *pro rata* share. See Generally, *Id.* Thus, there was no issue as to rights of contribution by either the plaintiff or the defendant.

Here, however, the Alex Parties have paid more than their pro rata share, which was determined by the jury to be only 15% of the total common liability fund of $1,900,000. The Alex Parties have been made to pay more than their pro rata share because E-K's liability

obligation (75% or $1,425,000 - $50,000 – 1,275,000) in contribution to the Alex Parties was discharged upon E-K's good faith finding and the dismissal of the Alex Parties contribution claim. So unlike either the plaintiff or the direct defendant in *Ponto*, E-K has an uncollectable obligation that includes an amount paid by the Alex Parties in excess of their pro rata share and that liability must be reallocated under Section 3. Thus, *Ponto* provides no guidance on how to properly apply the language of Section 3 to the parties of this appeal.

Accordingly, for the above reasons, that the obligations of settling tortfeasors/contribution defendants, as determined by a jury in allocating fault, are uncollectable and must be reallocated on a pro rata basis to the remaining tortfeasors under Section 3 of the Act. Thus E-K's liability of 75%, as determined by the jury, must be found to be an obligation which is uncollectable and thus reallocated to the Alex Parties and Safety in accordance with their respective pro rata share of liability.

III. FINDING E-K UNCOLLECTABLE WOULD ENCOURAGE PARTIES, LIKE SAFETY, TO ENTER INTO SETTLEMENT AGREEMENTS WHICH IS THE UNDERLYING GOAL OF THE ILLINOIS CONTRIBUTION ACT

Designating settling parties as uncollectable will promote settlement by all parties including both defendants and contribution defendants alike. This Court has recognized that "the Contribution Act seeks to promote two important public policies—the encouragement of settlements and the equitable apportionment of damages among tortfeasors." *Johnson v. United Airlines*, 203 Ill. 2d 121, 135, 784 N.E.2d 812 (2003). The stated policy's goal of equitable apportionment of damages can be seen in the exception as included in Section 3 in the Act where the legislature intended to make certain that the remaining tortfeasors share equally in the obligation of the party that cannot be collected from.

Finding settling tortfeasors uncollectable and providing for reallocation of their uncollectable obligation will encourage settlement by all parties, including those that believe they are marginally at fault. In a multi-party case, once a defendant settles, all other defendants, first party or those in contribution, will be encouraged to reach settlement directly with the plaintiff in order to avoid sharing in any uncollectable share in contribution. This will be especially true in cases where the settling party is the most culpable (but perhaps least insured) and leaving the remaining parties at risk of sharing in the most culpable settling party's uncollectable obligation. In other words, marginally at fault parties would be encouraged to reach a direct settlement with the plaintiff in order to avoid potentially sharing liability that could be larger than their own at a later date.

Indeed, this Court's decision in *Ready vs. United/Goedecke Services, Inc.*, 232 Ill. 2d 369, 905 N.E.2d 725 (2008), precluding settling defendants from being on the verdict form in a case where the plaintiff's claim and contribution claims are tried concurrently, already effectuates the same "settlement encouragement" and reallocation outcome as the exception under Section 3. The only difference – in a case that goes to trial on the plaintiff's claim – is that the jury is effectuating the reallocation by not having the option to allocate fault to settling defendants. In a contribution case tried post settlement, the court simply reallocates, on a pro rata basis, given the jury's consideration of fault as to all tortfeasors, even settling tortfeasors. Either way, make no mistake about it, when evaluating a case and settlement value, the risk of going to trial as a marginal defendant in a large damages case before a sympathetic jury where the culpable defendants have settled out is always a part of the equation. That risk always encourages settlement, whether the risk is born on a direct plaintiff's case or a subsequent contribution claim.

Safety's complaints about how it would be "unfair" to find E-K uncollectable belies the very point that settlement is encouraged through application of the reallocation provision as to uncollectable obligations under Section 3. For example, in this case, Safety could have settled with the Plaintiff for a nominal amount and, like E-K, would have likely been granted a good faith finding. By doing so, it would have limited its exposure and avoided the costs and expenses of the contribution trial and the risk of having to share in the uncollectable liability of E-K if it was found liable. Is there really any doubt that defendants do in fact settle earlier and maybe even for a little more to eliminate the risk of having to share in the uncollectable tortfeasors liability? Of course not. But Safety made its bed, knowing that E-K was not collectable and knowing the exception under Section 3 of the Act. Safety went to trial on its belief it would not be found liable. Safety decided to take the risk, with eyes wide open, however, most defendants would be encouraged to settle and avoid that risk.

Having made the decision not to settle and rest on its laurels of an assured victory at trial, Safety now claims that, "it would be manifestly more unjust…to force Safety International, who had zero say in the amount of the settlement….to be forced to pay 29% more….of this large settlement amount." First, Safety did have a say in the settlement. It could have objected – but never did so, even knowing the Alex Parties were pursuing their third-party contribution claim. Moreover, Safety also could have reached its own settlement agreement with the Plaintiff. To not do so was a decision that Safety made. This case will serve as a message to parties in contribution, like Safety, to resolve their claims or otherwise be willing to roll the dice and risk assuming a portion of an uncollectable obligations of joint tortfeasors based on the jury's apportionment of liability. Indeed, Safety's complaints are nothing more than "buyers' remorse"

and it is asking this Court to undo its bad decision by ruling in contravention of the very public policy behind enacting the Act. This Court should reject such a notion.

Contrary to the opinions of Safety, the Alex Parties are not unhappy with their settlement with Plaintiff. The Alex Parties' settlement with the Plaintiff greatly reduced the costs of the litigation as well as the risks to the Alex Parties **and** Safety at trial as a potential jury outcome on the Plaintiff's case greatly exceeded the settlement. However, the Alex Parties were also aware of the legal rights the legislature provided the Alex Parties to settle, inclusive of Safety, and to pursue its contribution rights against Safety and for the reallocation of E-K's liability should it exceed its settlement contribution. The Alex Parties are happy they exercised the rights that the legislature gave them. However, the Alex Parties are unhappy with how the District Court did not follow Illinois law nor did it recognize the strong public policy in Illinois encouraging settlement. The Alex Parties are not happy that Safety seems to think that equitable rights only belong to Safety. In the view of the District Court and Safety, the Alex Parties decided to settle so the fact that the Alex Parties are having to pay more than their pro rata share is simply tough luck. But that position is not Illinois law and Safety has pointed to no case law that has interpreted the legislature's intent that parties should be punished for settling with the injured plaintiff. Safety's self-serving interpretation and the District Court's application of the Act was actually in derogation of the Act's stated policy of equitable apportionment of damages between tortfeasors and the purpose of promoting settlements.

Such a result cannot stand and accordingly requires that this Court designate the jury adjudicated obligations of settling tortfeasors/contribution defendants, including E-K, as uncollectable.

IV. FINDING E-K AS COLLECTABLE UNDER THE ACT WOULD ILLUSTRATE THE UNCONSTITUTIONAL INEQUALITY OF THE ACT BY TREATING SETTLING TORTFEASORS DIFFERENTLY BASED UPON THEIR STATUS

In order to ensure a constitutional application of the Act, this Court must find E-K's obligation as adjudicated by the jury as uncollectable thereby treating both the Alex Parties and Safety as equal parties. As the Alex Parties have shown, legislation that arbitrarily discriminates in favor of a select group should be prohibited. *County of Bureau vs. Thompson*, 139 Ill.2d 323, 64 N.E.2d 1170, 336 (1990). The Alex Parties have emphasized the different avenues in which their contribution claim would have been litigated either concurrently or consecutively. These different paths to the end of a lawsuit should not end in drastically different outcomes. What the Alex Parties have sought from the beginning is that they be treated the same as all other parties involved in the litigation. This equality requires that the uncollectable obligations of settling tortfeasors/contributions defendants, as determined by a jury, be treated as uncollectable and trigger the reallocation provisions of Section 3 of the Act.

Ironically, the primary premise of Safety's arguments against the Alex Parties position is that this result would be unfair to them by asking them to share in E-K's uncollectable responsibility. Safety does not want equal protection under the laws, it only wants an outcome that favors Safety. The application of the Act demands liability sharing for the very purpose of **not** providing classification to parties and thereby treating them differently under the Act. By finding E-K's obligation as uncollectable, this Court would be treating both Safety and the Alex parties equally because it would be requiring that they share in the uncollectable obligation of E-K. Any other classification would arbitrarily discriminate in favor of Safety, simply because they were the Third Party Defendant and not a direct Defendant or Third Party Plaintiff, even though they are obviously considered a joint tortfeasor under the Act.

Hypothetically, this Court must consider the situation had the party designations been flipped. Consider the situation where Safety was a Third Party Plaintiff in contribution and the Alex Parties were the Third Party Defendant Had Safety entered into a settlement with the Plaintiff and then sought contribution from the Alex Parties, Safety would be advocating the same principle that the Alex Parties are now, that the statute requires equitable sharing of the portion of liability obligation that was assessed to E-K, which is undisputedly uncollectable. Otherwise, Safety would have been stuck paying E-K's share rather than sharing it with the Alex Parties. Again, this result would be unequitable under the statute because the statute should not arbitrarily require any party to assume the obligation of a settling tortfeasor/contribution defendant, like E-K, simply because they were the Plaintiff in the contribution action rather than the Defendant. The Act does not contain such a distinction and this Court should not apply the Act in such a way to create one. Accordingly, the Court must find that the jury adjudicated obligation of a settling tortfeasor/contribution defendant, dismissed with prejudiced pursuant to a good faith finding, is "uncollectable" under the Act.

CONCLUSION

Safety's willful refusal to acknowledge the clear and unambiguous language of Section 3 of the Act spotlights the futility of their arguments against the obvious meaning of the statutory text. The term "uncollectable" can only be read to address a broad category of obligations by tortfeasors, who for some are immune or otherwise not subject to collection by their joint tortfeasors. Safety has simply chosen to ignore the Court's primary directive of effectuating the actual language that is included in the statute.

This Court's consideration of this appeal should both begin and end with a simple and plain reading of the statute. The statute's term "uncollectable" can mean only that an obligation

of a good faith settling tortfeasor/contribution defendant, as determined by a jury post settlement, is an obligation which is not subject to collection. As pointed out at length, once the District Court allowed E-K to be dismissed with prejudice pursuant to a good faith finding, any obligation of E-K in contribution for causing the Plaintiff's injuries was not collectable by the Alex Parties on their contribution claim or otherwise. When Safety insisted and the District Court ordered, over the Alex Parties' objection, for E-K to be on the jury verdict form, it thereafter allowed the jury to determine E-K's uncollectable obligation thereby triggering the statutory language for reallocation of E-K's obligation between the Alex Parties and Safety on a pro rata basis as included in Section 3 of the Act.

Pursuant to the statutory text, no further inquiry is needed by the Court. However, the Alex Parties position is only strengthened by the equitable policy behind the Act, its legislative history and the Court's consideration of analogous case law. Precedence demonstrates that appropriate application was not meant to be limited to a single category of parties like those that were insolvent or those that were protected by statute. The Act's legislative history confirms this broad application in the noted textual change from a single classification "insolvent" to a more generalized carry all, "uncollectable". This Court should not ignore these factors and create its own narrow classification in defining the term uncollectable. Therefore, this Court must fine find that where a tortfeasor/contribution defendant has settled in good faith under Section 100/2(c) and 2(d) of the Contribution Act, that its later adjudicated liability obligation/percentage of liability in causing Plaintiff's injuries is uncollectable and subject to reallocation on a pro rata basis among remaining tortfeasors.

Wherefore, Appellants, ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC prays that this Court answer the certified question

presented by the Seventh Circuit and find that a good faith settling tortfeasor/contribution defendant's obligation as determined by the finder of fact's adjudicated percentage of liability in causing Plaintiff's injuries is uncollectable and thus must be reallocated on a pro rata basis among remaining tortsfeasors pursuant to Section 100/3 of the Contribution Act.

To the extent the Court makes a ruling related to this case specifically, ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC prays that this Court find that E-K's 75% pro rata liability as determined by the jury (Appendix at p.A19) is uncollectable under Section 100/3 of the Contribution Act and that the same must be reallocated to the Alex Parties and Safety on a pro rata basis as set forth in the Alex Parties opening brief.

Respectfully submitted,
ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA and ALEX EXPRESS, LLC.

/s/ Lori A.Vanderlaan

BEST, VANDERLAAN & HARRINGTON
Lori A. Vanderlaan, Bar No. 6230432
Wade T. Shimer, Bar No. 6297618
Attorneys for Third-Party Plaintiffs-Appellants
25 E. Washington Street, Suite 800
Chicago, IL 60602
312-819-1100
Lvanderlaan@bestfirm.com
wshimer@bestfirm.com
SERVICE ONLY at eservice@bestfirm.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 20 pages.

Respectfully submitted,

/s/ Lori A.Vanderlaan

BEST, VANDERLAAN & HARRINGTON
Lori A. Vanderlaan, Bar No. 6230432
Wade T. Shimer, Bar No. 6297618
Attorneys for Third-Party Plaintiffs-Appellants
25 E. Washington Street, Suite 800
Chicago, IL 60602
312-819-1100
Lvanderlaan@bestfirm.com
wshimer@bestfirm.com
SERVICE ONLY at eservice@bestfirm.com

NO. 126249

IN THE
SUPREME COURT OF ILLINOIS

Thomas Roberts and Diane Roberts, Plaintiffs v. Alexandria Transportation, Inc., et al. Defendants	)	Certif. 7th Cir. Federal Court, Seventh Circuit 19-2395, 19-2414
Alexandria Transportation, Inc., et al. Third-Party Plaintiffs-Appellants, Cross- Appellees, v. Safety International, LLC, Third-Party Defendant-Appellee, Cross- Appellant	)	

NOTICE OF FILING and CERTIFICATE OF SERVICE

To: David P. Bub
Brandon B. Copeland
Brown & James, P.C.
800 Market Street, 11th Floor
Saint Louis, MO 63101
bcopeland@bjpc.com
(314) 421-3400/(314) 421-3128 (F)
Attorneys for Third Party Defendant
Safety International, LLC

YOU ARE HEREBY NOTIFIED that on February 9, 2021, we electronically filed with the Clerk of the Supreme Court of Illinois, through Odyssey eFile, Reply Brief of Appellants and

Notice of Filing and Certificate of Service, true and correct copies of which are attached hereto and herewith served upon you.

Respectfully submitted,
ALEXANDRIA TRANSPORTATION, INC.,ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC

/s/ Lori A.Vanderlaan

BEST, VANDERLAAN & HARRINGTON
Lori A. Vanderlaan, IL Bar No. 6230432
Wade T. Shimer, IL Bar No. 6297618
Attorneys For Third-Party Plaintiffs-Appellants
25 E. Washington St., Suite 800
Chicago, IL 60602
312-819-1100
Lvanderlaan@bestfirm.com
wshimer@bestfirm.com
SERVICE ONLY at eservice@bestfirm.com

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, on oath state that I served the foregoing Brief of Appellant, pursuant to Supreme Court Rule 315(h), by having said copies sent via electronic mail to the above Service List on February 9, 2021.

/s/ Lori A.Vanderlaan

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.