No. 123853

In The
Supreme Court of Illinois

MARY TERRY CARMICHAEL,
Plaintiff-Appellant,

v.

PROFESSIONAL TRANSPORTATION, INC., a foreign Corporation, d/b/a PTI
Defendant-Appellee,

and

ACE AMERICAN INSURANCE CO., a foreign corporation, and
UNION PACIFIC RAILROAD COMPANY, a foreign corporation,
Defendants.

PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI
Counter-Plaintiff-Appellee,

v.

MARY TERRY CARMICHAEL,
Counter-Defendant-Appellant,

and

JESSE WHITE, ILLINOIS SECRETARY OF STATE
Counter-Defendant.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-17-0075. There Heard on Appeal from the
Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 12 CH 38582
The Honorable Judge **Sophia H. Hall** Presiding.

ADDITIONAL BRIEF OF THE DEFENDANT/COUNTER-PLAINTIFF-APPELLEE, PROFESSIONAL TRANSPORTATION, INC. CROSS-RELIEF REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This appeal centers on a 2006 amendment to Chapter 8 of the Illinois Vehicle Code – 625 ILCS 5/8-101, *et seq*. The amendment, section 5/8-101(c) ("5/8-101(c)"), requires a very limited group of vehicle operators who transport passengers for hire – "contract carrier[s] transporting employees in the course of their employment . . . in a vehicle designed to carry 15 or fewer passengers" – to purchase uninsured (UM) and underinsured (UIM) automobile insurance coverage for their passengers in the extraordinarily high amount of $250,000 per passenger. This is far in excess of the universal $20,000/$40,000 UM/UIM statutory limits then mandated for all other Illinois vehicle operators.

Under Chapter 8, failure to comply with the amendment subjects this narrow group of targeted vehicle operators to substantial criminal penalties and loss of their operating privileges. 625 ILCS 5/8-109 and 5/8-113. However, Chapter 8 contains no provision authorizing a private right of action for a violation of any of its provisions.

Nevertheless, plaintiff-appellant, Mary Terry Carmichael ("plaintiff"), asserted a private right of action under 5/8-101(c) on October 17, 2012, when she filed a declaratory judgment action against defendant-appellee Professional Transportation, Inc. ("PTI"), as well as PTI's insurer Ace American Insurance Company ("ACE") and her employer Union Pacific Railroad Company ("UP"). (C3-56 V1) (A. 18-28).

As to PTI, plaintiff alleged that she was injured in an accident with an underinsured motorist while riding in a PTI vehicle – a 6-passenger van. PTI had no fault for the accident. Nevertheless, plaintiff sought a declaration that PTI's failure to purchase the extraordinary UM/UIM coverage imposed by 5/8-101(c) rendered PTI legally responsible for her provable damages in excess of the $20,000 liability policy limits of the underinsured driver who caused the accident – up to the $250,000 UIM limits imposed by 5/8-101(c). (C4-6, 12 V1) (A. 19-21).

As to ACE, plaintiff alleged that it was liable to the same extent as PTI or up to its policy limits. (R C8-12 V1) (A. 23-28).

As to UP, plaintiff alleged that she was entitled to recover significant no-fault benefits from UP for her accident injuries under an "Off-Track Vehicle Accident Benefits" provision in the national labor agreement between her union and numerous railroads including the UP. (C6-7 V1) (A. 21-23).

For its part, PTI filed responsive pleadings raising affirmative defenses including that a private right of action could not properly be implied under 5/8-101(c); that the statute was unconstitutionally vague and uncertain as to the vehicles covered by the statute; and that the statute violated the special legislation clause of the Illinois Constitution and the equal protection clauses of the Illinois and U.S. Constitutions. (C826-29 V4) (A. 49-52). PTI also filed a counterclaim against the Illinois Secretary of State ("Secretary"), as well as Carmichael, again asserting the statute's constitutional infirmities. (C830-35 V4) (A. 53-58).

The Secretary, joined by plaintiff, moved to dismiss PTI's counterclaim under 735 ILCS 5/2-615 and 5/2-619 on the grounds that 5/8-101(c) was both constitutional and applicable to PTI. (C234-35 V1; C681-82 V3). On January 30, 2015, the circuit court (Honorable Sophia H. Hall) granted the motions to dismiss PTI's counterclaim, holding that 5/8-101(c) did apply to PTI's 6-passenger vehicles and was constitutional in all respects. (C801-08 V4) (A. 1-8). Subsequently, the circuit court also denied PTI's motion to dismiss plaintiff's declaratory judgment action, rejecting PTI's assertion that 5/8-101(c) did not permit judicial implication of a private right of action for its violation. (C1032-39, C1125 V5) (A. 10-16).

The circuit court's order dismissing PTI's counterclaim became final and appealable on December 13, 2016, after plaintiff's claims against ACE and UP were resolved or dismissed, and plaintiff voluntarily dismissed her suit against PTI without prejudice pursuant to 735 ILCS 5/2-1009. (C1176 V5) (A. 139).

PTI then appealed the order dismissing its counterclaim – urging that a private right of action should not be judicially implied for an alleged violation of 5/8-101(c); that the statute was inapplicable to PTI; and that it was unconstitutional. On June 26, 2018, the Appellate Court held that 5/8-101(c) does not give rise to a private right of action and that plaintiff's complaint against PTI should have been dismissed on that ground. Accordingly, the Appellate Court affirmed the circuit court's dismissal of PTI's counterclaim on mootness grounds, without reaching the constitutional or applicability issues that PTI's counterclaim

presented. *Carmichael v. Union Pacific R. Co.*, 2018 IL App (1st) 170075, ¶ 2. (Pl. A. 2-11) (A. 215-24).

Plaintiff filed a Petition for Leave to Appeal, and this Court granted the Petition on September 26, 2018. (A. 199).

ISSUES PRESENTED FOR REVIEW ON PLAINTIFF'S APPEAL

1. Did the Appellate Court correctly rule, in accordance with the prior decisions of this Court, that a private right of action should not be judicially implied for an alleged violation of 5/8-101(c)?

2. Should the Appellate Court's decision also be affirmed on the ground that under the rule of lenity, 5/8-101(c)'s singular reference to "a" vehicle designed to carry 15 passengers requires that the statute's applicability be limited to vehicles that have the capacity to carry 15 passengers?

ISSUES PRESENTED ON PTI'S CLAIM FOR CROSS-RELIEF

1. Does the uncertainty about the vehicles to which 5/8-101(c) applies render the statute unconstitutionally vague and unenforceable?

2. Do the extraordinary UM/UIM coverage requirements imposed on a narrow group of contract carriers by 5/8-101(c) violate the special legislation prohibition in the Illinois Constitution?

3. Do the unique UM/UIM coverage requirements of 5/8-101(c) also violate the equal protection clauses of the Illinois and United States Constitutions?

JURISDICTION

This Court has jurisdiction under Illinois Supreme Court Rule 315(a). The Appellate Court had jurisdiction under Illinois Supreme Court Rules 301 and 303, providing for appeals from final orders. The order dismissing PTI's counterclaim was entered on January 30, 2015. (C801 V4) (A. 1). That order became final on December 13, 2016, when all remaining claims were either resolved (C1025-26, C1189-94 V5) or voluntarily dismissed. (C1176 V5) (A. 139). *Avery v. Auto-Pro, Inc.,* 313 Ill. App. 3d 747, 750-51 (1st Dist. 2000); *Camper v. Burnside Constr. Co.,* 2013 IL App (1st) 121589, ¶ 41. PTI filed its timely notice of appeal on January 6, 2017. (C1177 V5) (A. 140-49).

STATUTE INVOLVED

Chapter 8 of the Illinois Vehicle Code ("Motor Vehicles Used For Transportation Of Passengers"), 625 ILCS 5/8-101 *et seq.* (2006). See Appendix hereto (A. 165-71).

STATEMENT OF FACTS

Plaintiff's Statement of Facts is incomplete. The facts relevant to the issues presented herein are as follows:

Plaintiff Allegedly Injured in a Collision While Riding as a Passenger in a PTI 6-Passenger Van.

The origin of this declaratory judgment action was an automobile collision that occurred on November 13, 2010 in the City of Chicago when a vehicle driven by Dwayne Bell struck a PTI van. (C30-36 V1) (A. 63-69). Plaintiff Mary Terry

Carmichael, a UP employee, was a passenger being transported between railroad jobsites in the PTI van, pursuant to a service contract between PTI and UP. (C30 V1) (A. 63). The PTI vehicle was a vehicle designed to provide seating for no more than six passengers and a driver. (C336-37 V2) (A. 131-32).

PTI Had No Fault for the Accident;
Law Division Action Against PTI Dismissed.

Plaintiff originally filed a Law Division action (11 L 9679) against PTI, UP and other defendants on September 15, 2011. (C39 V1). That case was dismissed as to PTI and UP when plaintiff conceded that PTI and UP were blameless and that the accident was caused solely by the negligence of Dwayne Bell. (C205, 217 V1). At the time of the accident, Bell reportedly had the minimum liability coverage required by the Illinois Insurance Code of $20,000 per person/$40,000 per accident. (C218 V1). *See* 215 ILCS 5/143a and 5/143a-2(2); 625 ILCS 5/7-203. Plaintiff ultimately settled with Bell for $20,000. (C535 V3).

Plaintiff Files Declaratory Judgment Action Against PTI and Others.

Plaintiff next filed a Chancery Division action for declaratory judgment against PTI, ACE and UP on October 1, 2012. (C3-56 V1) (A. 18-28). As to PTI, plaintiff sought a declaration that PTI was liable to plaintiff under 5/8-101(c) because PTI had not purchased $250,000 of UM/UIM coverage from ACE for each of its passengers as allegedly required by 5/8-101(c). PTI's entire vehicle fleet of 6-passenger vans was covered by a Business Auto Policy issued by ACE with liability limits of $5,000,000. (C8 V1; C881 V4). However, the policy's

UM/UIM coverage was the minimum $20,000 per person/$40,000 per accident required by the Illinois Insurance Code. (C881, C908-11 V4) (A. 74).

Plaintiff alleged that ACE was also liable under 5/8-101(c) and other provisions of the Insurance Code either up to $250,000 or its policy limits. (C8-13 V1) (A. 23-28).

In addition, plaintiff alleged that UP was liable to compensate her for lost wages and medical costs arising from the accident under a no-fault "Off-Track Vehicle Accident Benefits" provision contained in a national labor agreement between plaintiff's union and many of the nation's railroads, including UP. (C6-8 V1; C861-66 V4) (A. 128-30, 201-14). Plaintiff alleged that UP had violated the agreement, which obligated UP to pay her 80% of her weekly wage loss up to a $1,000 per week during a period of 156 continuous weeks, as well as certain medical expenses. (C6-8; C14-27 V1; C861-66 V4) (A. 129-30, 201-14). UP did not dispute its no-fault liability under the national labor agreement. (C80 V1) (Sup C21).

The Relevant Statutory Provisions.

The statutory provision relied on by plaintiff in her declaratory judgment action against PTI was added to Chapter 8 of the Illinois Vehicle Code by a 2006 amendment to 625 ILCS 5/8-101. (P.A. 94-319, §5) (A. 165). Previously, Chapter 8 uniformly applied to all "[p]ersons who operate motor vehicles in transportation of passengers for hire," including operators of medical transport

vehicles and vehicles used to transport minors to or from educational and recreational facilities. 625 ILCS 5/8-101(b) and 5/8-101.1. Chapter 8 required that each operator provide proof to the Illinois Secretary of State of their financial ability to pay any future adverse liability judgments and stated that such "proof" could be made by one of the following methods: 1) a surety bond in the amount of $250,000 per vehicle; 2) a liability insurance policy with minimum limits of $250,000 per person and $50,000 for property damage, with the total amount of insurer exposure capped at $300,000 per vehicle; or 3) a certificate of self-insurance issued by the Director of the Department of Insurance. *See* 625 ILCS 5/8-102 – 5/8-112. (A. 166-70).

Prior to 2006, however, no part of Section 8 addressed UM/UIM coverage. Again, the only UM/UIM coverage required in Illinois prior to 2006 was the coverage demanded of all vehicle drivers by Sections 143a and 143a-2(2) of the Illinois Insurance Code, which at the time of plaintiff's accident was $20,000 per person/$40,000 per accident. 215 ILCS 5/143a and 5/143a-2(2); 625 ILCS 5/7-203.[1]

The 2006 amendment contained in 5/8-101(c) did away with the symmetry between the Insurance Code and the Vehicle Code. The amendment increased the Insurance Code's $20,000/$40,000 UM/UIM coverage requirement more than tenfold to "$250,000 per passenger." However, this additional obligation was

[1] These limits were increased for all motorists to $25,000/$50,000 effective January 1, 2015 (P.A. 98-519, § 5).

imposed on only one select subgroup of the many entities that transported passengers for hire, *i.e.*, "a contract carrier transporting employees in the course of their employment" in "a vehicle designed to carry 15 or fewer passengers." After the amendment, the relevant provisions of 5/8-101 provided:

> **"Sec. 8-101. Proof of financial responsibility** – Persons who operate motor vehicles in transportation of passengers for hire.
>
> (a) It is unlawful for any person, firm or corporation to operate any motor vehicle along or upon any public street or highway in any incorporated city, town or village in this State for the carriage of passengers for hire, accepting and discharging all such persons as may offer themselves for transportation unless such person, firm or corporation has given, and there is in full force and effect and on file with the Secretary of State of Illinois, proof of financial responsibility provided in this Act.
>
> * * *
>
> (c) *This Section also applies to a contract carrier transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers.* As part of proof of financial responsibility, *a contract carrier* transporting employees in the course of their employment *is required to verify hit and run and uninsured motor vehicle coverage*, as provided in Section 143a of the Illinois Insurance Code, *and underinsured motor vehicle coverage*, as provided in Section 143a-2 of the Illinois Insurance Code, *in a total amount of not less than $250,000 per passenger*." (A. 165) (Emphasis added).

The financial burden imposed by this unique UM/UIM coverage requirement was significant. If applicable to PTI, for example, the provision would increase PTI's annual insurance costs on each of its 156 six (6)-passenger vehicles based in Illinois by $580 per vehicle (C343-46 V2) (A. 133-35), and that was prior to the doubling of UM/UIM coverage to $500,000 per passenger as

required by a 2016 amendment to 5/8-101(c) discussed below. P.A. 99-799 (2016) (A. 191-92).

The Statutory Enforcement Scheme.

Chapter 8 of the Vehicle Code provides substantial criminal and regulatory penalties for a violation of its financial responsibility requirements, including those set forth in 5/8-101(c). Section 5/8-116 provides that "any person who fails to comply with the provisions of this chapter . . . is guilty of a Class A misdemeanor," allowing for a $2500 fine and imprisonment for up to one day less than a year. 730 ILCS 5/5-4.5-55(a)-(e). Also, section 5/8-113 provides that the Secretary may immediately revoke a violator's operating privileges for non-compliance by suspending its registration certificates, plates, and stickers. However, Chapter 8 does not include any provision authorizing a private right of action for a violation of any of its provisions.

Legislative History.

The legislative history shows that 5/8-101(c)'s extraordinary $250,000 UM/UIM coverage requirement was added to Section 8 in 2006 at the behest of national railroad labor unions. The amendment provided the unions with a means of obtaining greater no-fault benefits for their membership without going through the collective bargaining process and renegotiating the national railroad labor agreement that already provided generous no-fault benefits to railroad union employees should they be injured in a vehicle accident while on duty. (C861-66 V4) (A. 128-30). Thus, the amendment was unsuccessfully opposed by the

railroad industry. *See* House Transcript, 3/10/2005, 94th General Assembly, Regular Session, 28th Legislative Day, Illinois House Transcript, 2005 Reg. Sess. No. 28 at 90-92. (House Bill 2510) (C915-16 V4) (A. 75-78):

> Clerk Mahoney: "House Bill 2510, a Bill for an Act concerning transportation. Third Reading of this House Bill."
>
> Speaker Turner: "The Gentleman from Madison, Representative Hoffman."
>
> Hoffman: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. What this does is it increases the liability coverage that must be carried to $250 thousand per passenger on contract carriers and they must file proof of this for financial responsibility."
>
> Speaker Turner: "The Gentleman from Cook, Representative Parke, for what reason do you rise?"
>
> * * *
>
> Parke: "Representative, it shows in our staff analysis that the Railroad Association is opposed. Is that still the case?"
>
> Hoffman: "Yeah, it's my understanding that this is... the Railroad Association is opposed, the United Transportation Union as well as the Brotherhood of... of Locomotive Engineers are in favor."
>
> Parke: "And the reason that they're opposed is because this is a added liability that they are having to assume? And if so, why don't you collectively bargain for it?"
>
> Hoffman: "That has... that has nothing to do with... that has nothing to do with collective bargaining. All this says is what happens when you... when you're on a railroad and you run the ri... you run the rail... the train... at the end of the train... where the train stops, you have to get back to where you started. So, they have these carriers that... that they contract with who drive the people who work on the train back to their original starting spot. What we're saying is they have to have a minimum amount of liability coverage, just like we

> say other contract carriers have to have a minimum amount of liability coverage."
>
> Parke: "Yeah, but you're saying you want to increase the minimum."
>
> Hoffman: "Yes."
>
> Parke: "And therefore, why don't you collectively bargain for that? If you want it, why not collectively bargain when you're at the bargaining table and say we want this additional benefit?"
>
> Hoffman: "I don't believe it's an issue... it is not a benefit to working people. It's... 'DDD'
>
> Parke: "It's an additional cost to the railroads."
>
> Hoffman: "It could be an additional cost if the contract carrier were to pass the cost on to the railroad."
>
> Parke: "Well, thank you. I must respectfully rise in opposition to the Gentleman's legislation."
>
> (Vote taken)

The legislature's willingness to provide railroad labor union employees with special UM/UIM benefits and to burden certain "contract carriers" did not end with the 2006 passage of the original 5/8-101(c). In 2016, the legislature doubled the UM/UIM coverage limits from $250,000 to $500,000 per passenger, effective January 1, 2017. Moreover, in the same amendment, the legislature expressly stated its intent to benefit "railroad employees." P.A. 99-799 (2016).

Then, in 2017, the legislature further revised 5/8-101(c) to directly burden the railroad industry itself by imposing a new enforcement duty on railroads. According to this latest amendment of 5/8-101(c) effective January 1, 2018: "Each rail carrier that contracts with a contract carrier for the transportation of its

employees in the course of their employment shall verify that the contract carrier has the minimum insurance coverage required under this subsection (c)." P.A. 100-458 (2017).

PTI Raises Numerous Defenses To Plaintiff's Claim For Declaratory Relief.

PTI answered plaintiff's declaratory judgment complaint and denied that plaintiff was entitled to the declaratory relief sought. (C821-25 V4) (A. 44-48). PTI denied that 5/8-101(c) made it legally responsible for plaintiff's damages sustained in the November 13, 2010 accident which exceeded the policy limits of the tortfeasor Dwayne Bell. (C825 V4) (A. 48). In addition, PTI raised *inter alia* the following affirmative defenses and arguments in support of its denial:

- Chapter 8 did not grant plaintiff a private right of action against PTI for an alleged violation of 5/8-101(c) and, under settled precedent, no private right of action should be judicially implied. (C827-28 V4) (A. 50-51).
- The statute's reference to "a vehicle designed to carry 15 or fewer passengers" was ambiguous, and therefore the statute was unconstitutionally vague and unenforceable. (C827 V4) (A. 50).
- If the statute permitted a private right of action, was not unconstitutionally vague or uncertain, and did apply to PTI's 6-passenger vans, it was unconstitutional under the special legislation prohibition in the Illinois

Constitution and the equal protection guarantees of the Illinois and U.S. Constitutions. (C826 V4) (A. 49-50).[2]

PTI Files Counterclaim Against Plaintiff and the Illinois Secretary of State.

In order to obtain a binding resolution of the constitutional issues, PTI also filed a counterclaim (Counts I-IV) against plaintiff and the Secretary, asserting all of PTI's constitutional challenges to the statute. (C830-35 V4) (A. 53-58).

Secretary Moves to Dismiss PTI's Counterclaim.

The Secretary moved to dismiss PTI's counterclaim under 735 ILCS 5/2-615 and 5/2-619 (C234-35 V1), and plaintiff joined in the motion. (C681-82 V3). Both contended that the statute's singular reference to "a" 15-passenger designed vehicle was not ambiguous or unconstitutionally vague, and that the unique UM/UIM coverage requirements imposed by the statute were not in violation of the special legislation clause of the Illinois Constitution or the equal protection clauses of the Illinois and U.S. Constitutions. (C236-49 V1; C361-72 V2; C681-728 V3; C787-96 V4).

Nonetheless, the Secretary also repeatedly urged that the constitutional issues presented by PTI's counterclaim be deferred pending the circuit court's resolution of whether the enforcement scheme surrounding 5/8-101(c) permitted a judicially implied private right of action for its alleged violation. (C248 V1; C371-72 V2; C795 V4). The Secretary reasoned that if the circuit court

[2] These record citations are to PTI's Fourth Amended Answer, Affirmative Defenses and Counterclaim. PTI's prior Answers and Affirmative Defenses are at C65-71 V1; C125-213 V1; C392-480 V2.

determined that no such implied private right of action existed, the constitutional issues need not be decided. *Id.*

Circuit Court Orders Briefing of the Non-Constitutional "Private Right of Action" Issue.

On April 15, 2014, the circuit court ordered PTI to file its own motion to dismiss plaintiff's complaint based on PTI's affirmative defense that 5/8-101(c) of the Vehicle Code did not permit a judicially implied private civil right of action seeking money damages. (C373 V2). Thereafter, the issue was briefed by PTI and plaintiff. (Sup R C8-24) (C506-60 V3; C530-39 V3; C545-65 V3).

Circuit Court Proceeds to Decide the Constitutional Issues; Grants the Motions to Dismiss PTI's Counterclaim.

Despite ordering the parties to brief the non-constitutional issue of whether 5/8-101(c) allowed an implied private right of action for its violation, the circuit court, without explanation, decided to enter and continue PTI's motion to dismiss on that non-constitutional ground and to consider first the Secretary's motion to dismiss PTI's counterclaim. (C571-658 V3, C681-728 V3; C787-96 V4). Then, on January 30, 2015, the circuit court decided all of the constitutional issues adversely to PTI and granted the Secretary's and plaintiff's joint motion to dismiss PTI's counterclaims. (C801-08 V4) (A. 2-8). The circuit court's rulings and reasoning may be summarized as follows:

- The court ruled that the statute's specific reference to "a" singular 15-passenger vehicle design did not render 5/8-101(c) ambiguous or unconstitutionally vague. Rather, the court held that the statute must be

read to apply to any and all vehicles with a seating capacity for 15 passengers, or any lesser number. Thus, the rule of lenity and the other rules of statutory interpretation relied upon by PTI need not be considered. (C803-04 V4) (A. 3-4).

- The circuit court also ruled that the statute did not violate the special legislation prohibition in the Illinois Constitution or the equal protection clauses of the Illinois and U.S. Constitutions. (C805-07 V4) (A. 5-7).

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). Furthermore, the court flatly rejected the Secretary's argument that safety concerns afforded a rational basis for the discriminatory UM/UIM limits. (C807 V4) (A. 7). Nevertheless, the court posited an alternative hypothetical that 5/8-101(c) might have been motivated by a legislative concern that, unlike all other commercial motor vehicle passengers, employees who travel in contract carriers' vehicles furnished by their employers "have no choice in their employers' selection of contract carriers." (C806 V4) (A. 6). Opting for this hypothetical motivation over that explicitly described in the legislative history, the court concluded that the statute had "a conceivable rational basis." *Id.*

Circuit Court Subsequently Rules that 5/8-101(c) Permits an Implied Private Right of Action for Its Violation.

After determining that 5/8-101(c) applied to PTI's 6-passenger vehicles and was constitutional, the circuit court addressed PTI's motion to dismiss plaintiff's complaint. PTI's motion pointed out that no part of Chapter 8 expressly conferred a private right of action for a violation 5/8-101(c). PTI further asserted that because the Vehicle Code provided significant civil and criminal penalties to encourage statutory compliance, the "necessity" requirement set forth in this Court's precedent for implying a private right of action could not be satisfied. (Sup C10-22).

As an additional ground precluding the implication of a private right of action, PTI urged that PTI's alleged violation of the statute did not proximately cause plaintiff any tortious harm. Thus, one could not fashion a tort analog for a violation of 5/8-101(c) – an additional prerequisite for implication of a private right of action required by this Court's prior decisions. (C1046-47 V5).

However, on July 24, 2015, the circuit court denied PTI's motion to dismiss (C1032-39 V5) (A. 9), and thereafter denied its motion to reconsider. (C1125 V5) (A. 17). The court ruled that an implied right of action for a failure to purchase the UM/UIM insurance coverage required by 5/8-101(c) should be recognized, even though (as the court acknowledged) the express criminal penalties provided by Chapter 8 were sufficient to "encourag[e] compliance." (C1039 V5) (A. 16). The circuit court reasoned "necessity" lay in the fact that any enforcement action

under Chapter 8 imposing the harsh civil and criminal penalties provided for therein would not directly compensate plaintiff for her alleged injuries. *Id.* At PTI's request, the circuit court was willing to certify the issue under Supreme Court Rule 308(a) (C1133-34 V5); however, the Appellate Court denied PTI's Rule 308 application for leave to appeal. (C1174 V5).

All Other Claims Resolved or Voluntarily Dismissed.

Meanwhile, on April 25, 2015, the circuit court granted ACE's motion to dismiss plaintiff's complaint against it, reasoning that 5/8-101(c) burdened only certain contract carriers, not their insurers. (C1189-94 V5).[3] Plaintiff also settled her no-fault "Off-Track Vehicle Accident Benefits" claims against UP (C1025 V5), and UP was dismissed with prejudice on July 9, 2015. (C1026 V5). Then, on December 13, 2016, when the case was finally called for trial, plaintiff voluntarily dismissed her claim against PTI without prejudice under 735 ILCS 5/2-1009 (C1176 V5) (A. 139), rendering the circuit court's January 30, 2015 order dismissing PTI's counterclaim final and appealable.

Re-filed Action.

Plaintiff subsequently re-filed her underlying declaratory judgment action solely against PTI. See Complaint filed in Case No. 2017-CH-01221, Circuit Court of Cook County, Chancery Division, reproduced in the Appendix hereto (A. 154-60). However, further proceedings in the re-filed case have been stayed, pending disposition of this appeal. (A. 161). This Court may take judicial notice

[3] Plaintiff appealed that order, but subsequently withdrew the appeal.

of the re-filed underlying action and the pleadings filed therein. *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 20; *People v. Ernest*, 141 Ill. 2d 412, 428 (1990).

Appellate Court Decision.

On PTI's appeal, the Appellate Court found that 5/8-101(c) "does not give rise to a private right of action." (Opinion, ¶ 2) (Pl. A. 2) (A. 216). Relying on this Court's prior decisions in *Metzger v. DaRosa*, 209 Ill. 2d 30, 42-43 (2004) and *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 460 (1999) (Opinion, ¶¶ 18-19) (Pl. A. 7-8) (A. 221-22), as well as numerous appellate court decisions (Opinion, ¶ 20) (Pl. A. 8-9) (A. 222-23), the Appellate Court held that plaintiff's claim against PTI did not meet the "necessity" element which must be satisfied before a court may imply a private right of action for a statutory violation. (Opinion, ¶ 24) (Pl. A. 10-11) (A. 224-25).

The Appellate Court observed that "the Vehicle Code contains its own framework for enforcement" subjecting a violator to both criminal penalties (Class A misdemeanor) and the suspension of operating privileges, and concluded that these enforcement mechanisms were such that "[w]e cannot say that these statutory penalties are so deficient that it is necessary to imply a private right of action to effectuate the statute's purpose." (Opinion, ¶ 21) (Pl. A. 9-10) (A. 223-24). Therefore, the Appellate Court concluded that "Carmichael's complaint against PTI should have been dismissed" on the ground "that section 8-101(c) of the Vehicle Code does not imply a private right of action for passengers in

vehicles subject to the provisions of that section." (Opinion, ¶¶ 2, 24) (Pl. A. 2, 10-11) (A. 216, 224-25).

Reasoning that its holding mooted PTI's counterclaim challenging the constitutionality of 5/8-101(c), the Appellate Court affirmed the circuit court's January 30, 2015 order dismissing PTI's counterclaim, "although on grounds different from that relied on by the trial court." (Opinion, ¶ 24) (Pl. A. 10-11) (A. 224-25). Thus, the Appellate Court did not reach any of the constitutional issues raised by PTI or determine whether 5/8-101(c) applied to PTI's 6-passenger vans. (Opinion, ¶ 2) (Pl. A. 2) (A. 216).

ARGUMENT

I. The Appellate Court Correctly Held, in Accordance with this Court's Decisions in *Metzger* and *Fisher*, that No Private Right of Action Should Be Judicially Implied for an Alleged Violation of Section 5/8-101(c) of the Vehicle Code.

A. Standard of Review.

The issue of whether a court may properly imply a private right of action under a statute that does not expressly confer such a right is an issue of law that is reviewed *de novo*. *Metzger*, 209 Ill. 2d at 34; *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶¶ 26, 39.

B. *Metzger* and *Fisher* Demonstrate the Correctness of the Appellate Court's Decision.

It is fundamental that a private right of action for a statutory violation exists only in those rare circumstances when each of the four following factors is satisfied:

> "(1) [T]he plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action *is necessary to provide an adequate remedy for violations of the statute*." *Metzger*, 209 Ill. 2d at 36. (Emphasis added) (Citation).

In both *Metzger* and *Fisher*, this Court restated the well-settled proposition that the judiciary is to imply a private right of action under a statute with great caution. *Metzger*, 209 Ill. 2d at 42-43; *Fisher*, 188 Ill. 2d at 460. In both cases, the Court focused on the "necessity" element required to imply a private right of action for a statutory violation, noting that plaintiff must establish that "implying a private right of action is necessary to provide an adequate remedy for violations of the statute." *Metzger*, 209 Ill. 2d at 36; *Fisher*, 188 Ill. 2d at 460. This Court then held that this necessity element was lacking in both cases.

In *Metzger*, the plaintiff, a state police employee, alleged a private cause of action based on the state police's violation of the whistleblower protection provisions of the Illinois Personnel Code. She alleged that she was subjected to retaliatory disciplinary actions including the denial of advancement and promotions because she reported the improper conduct of other state police employees. *Metzger*, 209 Ill. 2d at 32-33. Even though the whistleblower provisions specifically prohibited such adverse disciplinary action, this Court, in answer to questions certified to it by the Seventh Circuit, held that this express prohibition was by no means determinative of the existence of an implied cause of action. Instead, this Court held that a proper analysis of the "necessity" element

required a singular focus on the adequacy of the applicable statute's own enforcement mechanisms. *Id.* at 39-40.

The whistleblower statute in *Metzger* subjected violators to conviction for a Class B misdemeanor punishable by up to $1500 fine and imprisonment for no more than 6 months. *Id.* at 41. Thus, this Court reasoned that it could not be said that the enforcement mechanisms were "so deficient that it is necessary to imply a private right of action for employees to effectuate [the statute's] purpose" (citation). *Id.* at 42. Furthermore, the *Metzger* Court observed that "[t]he legislature could have granted state employees a private right of action for damages, but it did not do so." *Id.* The *Metzger* Court distinguished its prior decision in *Rodgers v. St. Mary's Hospital of Decatur*, 149 Ill. 2d 302, 308-09 (1992) on the ground that the X-Ray Retention Act at issue prescribed "no specific administrative remedy for a violation of the Act." *Metzger*, 209 Ill. 2d at 40.

Indeed, the *Metzger* Court made clear that under a proper "necessity" analysis, assuring that an individual is compensated for her injuries is *not* the proper focus in determining whether to recognize an implied private right of action for a statutory violation. As stated in *Metzger*, 209 Ill. 2d at 41:

> "She [Metzger] complains that the grievance procedure does not provide for compensation for the damages she suffered. However, Metzger's argument *inappropriately focuses on the claimed right to compensation* for her injuries *rather than on whether adequate remedies are provided to make compliance with the Personnel Code likely*." (Emphasis added).

In *Fisher*, the Supreme Court engaged in a similar analysis of the "necessity" requirement. *Fisher* sued a nursing home for violating those provisions of the Nursing Home Care Act that prohibited a nursing home from retaliating against nursing home employees who reported improper patient treatment. Even though the plaintiff nurses in *Fisher* were allegedly harassed, fired or otherwise terminated for reporting improper patient treatment, this Court refused to recognize an implied private right of action in favor of the nurses. *Fisher*, 188 Ill. 2d at 464. Instead, the Court again focused on the statute's own enforcement mechanisms. The Court noted that the Nursing Home Care Act subjected violators to penalties and fines as well as license revocation, and therefore concluded that "[i]t is not necessary to imply a private right of action . . . for nursing home employees in order to provide an adequate remedy for violations of the Act." *Id.*

Here, the Appellate Court soundly concluded that the rationale and holdings in *Metzger* and *Fisher* controlled the instant case. (Opinion, ¶ 24) (Pl. A. 10-11) (A. 224-25). Indeed, one who violates Chapter 8 of the Vehicle Code is subject to harsher criminal penalties (conviction of a Class A misdemeanor allowing a fine up to $2500 and imprisonment for up to one day less than one year (5/8-116)) than in *Metzger* (Class B misdemeanor and up to $1500 fine). A violator of Chapter 8 is also subject to the suspension of its operating license as in *Fisher*. (See 5/8-113 permitting the suspension of a violator's certificates, plates, and stickers).

The Appellate Court's decision is consistent not only with *Metzger* and *Fisher*, but also with a long line of appellate court cases that have cited *Metzger* and *Fisher* in concluding that a variety of statutory violations did not meet the "necessity" requirement for implying a private right of action. See *Rekosh v. Parks*, 316 Ill. App. 3d 58, 73-74 (2d Dist. 2000), refusing to imply a private right of action under the Funeral Directors and Embalmers Licensing Code because the statute expressly provided that a funeral home that violated the Act could be punished by fines and the suspension of its license; *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶ 46, refusing to imply a private right of action under the Cemetery Care Act because the Act "is replete with sanctions and remedies for violations of its provisions"; *Tunca v. Painter*, 2012 IL App (1st) 110930, ¶¶ 19-22, holding that a private remedy for a violation of the confidentiality provisions of the Medical Studies Act would not be judicially implied because *inter alia* a violation of the Act constituted a Class A misdemeanor; *Davis v. Kewanee Hospital*, 2014 IL App (2d) 130304, ¶ 38 (same).

Indeed, the "necessity" analysis in many of the above-cited cases was resolved by focusing on the strength of the very same kind of penalties prescribed for a violation of 5/8-101(c) – suspension of operating privileges and a Class A misdemeanor allowing fines and imprisonment. *See* 625 ILCS 5/8-113, 5/8-116. The latter is a time-honored distinction in Illinois. *See People v. Simmons*, 145 Ill. 2d 264, 272 (1991), noting that "there is a clear line between sentences of imprisonment and sentences involving no deprivation of liberty" (citation).

In contrast, plaintiff cites only to *Pilotto v. Urban Outfitters West, L.L.*C., 2017 IL App (1st) 160844, ¶¶ 22-45 (Pl. Br. 5). But in *Pilotto*, the only statutory penalty provided for a violation of the Restroom Access Act was a paltry $100 fine, which did not provide store owners with a sufficient motivation to comply with the Act. *Id.* at ¶ 35. Thus, *Pilotto* is wholly consistent with *Metzger*, *Fisher* and their appellate court progeny.

Nevertheless, plaintiff argues that the penalty provisions in Chapter 8, however severe, were not sufficient to prevent PTI from violating the statute and have not yet prompted the State to initiate an enforcement action against PTI. (Pl. Br. 6). However, as the Appellate Court astutely reasoned: "Every implied-right-of-action suit involves a defendant's alleged failure to comply with the statute at issue. If that were by itself sufficient to make a private right of action necessary, the element of necessity would be meaningless." (Opinion, ¶ 23) (Pl. A. 10) (A. 224). Furthermore, plaintiff's arguments ignore the outstanding issues, never reached by the Appellate Court, as to whether 5/8-101(c) even applies to PTI's 6-passenger vans and, if so, whether the statute is constitutional. Understandably, the Secretary has not sought to enforce the statute against PTI in the face of these unresolved issues.

C. Plaintiff Is Not Left Without a Remedy.

Plaintiff's Brief (p. 7) contains a quote from one of the sponsors of the 2006 amendment (Senator Munoz) about a "remedy" needed for employees transported by a contract carrier in the event of an accident with an uninsured or

underinsured motorist. However, nothing in Senator Munoz's remarks evinces that the legislature intended to allow a private right of action for a violation of 5/8-101(c) in addition to the severe penalties already provided in Chapter 8 of the Vehicle Code. To the contrary, as in *Metzger* and *Fisher*, the legislature could have enacted such an additional remedy "but did not do so." *Metzger*, 209 Ill. 2d at 42 and *Fisher*, 188 Ill. 2d at 467. This supports a presumption that a civil remedy was deliberately omitted, *Metzger*, 209 Ill. 2d at 42-43 – a presumption reinforced by the legislature's subsequent 2016 and 2017 amendments to 5/8-101(c) which also do not provide for a private civil remedy.

Moreover, provision of a private civil remedy was certainly not necessary to assure a remedy for railroad employees like plaintiff, who are injured in an accident with an uninsured or underinsured motorist while being transported by a contract carrier. Here plaintiff had the following "remedies":

- Worker's-compensation-like benefits available under the no-fault Off-Track Vehicle Accident Benefits provision of the national railroad union contract, obligating her employer UP to pay her certain medical expenses and to provide her with up to $1,000 per week for time lost from work for up to 156 continuous weeks (C6-8; C14-27 V1; C853-66 V4; C1025-26 V5) (A.128-30, 201-14);
- Benefits available under the Railroad Retirement Act (C987 V4);
- The limits of the liability insurance policy of the at-fault driver Dwayne Bell (C18 V1; C535 V3);

- The personal assets of Dwayne Bell; and
- The potential UIM coverage of her own automobile liability policy (plaintiff testified that she and her husband owned three automobiles). (C993 V4).

Indeed, in *Abbasi ex. rel Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 398 (1999), this Court found no private right of action should be implied under the Lead Poisoning Prevention Act, noting that other remedies were available to plaintiff. Accord *Tunca*, 2012 IL App (1st), ¶ 22; *Davis*, 2014 IL App (2d), ¶ 39.

In *Fisher*, 188 Ill. 2d at 467, this Court summarized its "necessity" analysis with language that could have been written for the case at bar:

> "The legislature could have gone further and granted employees a private action for damages, but it did not do so. We cannot say that the statutory framework the legislature did provide is so deficient that it is necessary to imply a private right of action for employees in order to effectuate the purpose of the Act."

Here too, the legislature could have gone further in Chapter 8 of the Vehicle Code. It could have granted those employees covered by 5/8-101(c) with a private right of action for damages against a vehicle operator that failed to purchase the extraordinary UM/UIM coverage set forth in 5/8-101(c).[4] But it did not do so in 5/8-101(c) or in the subsequent 2016 and 2017 amendments to the statute. Rather, as in *Fisher* and *Metzger*, the legislature chose to impose substantial compliance

[4] *See, e.g.*, The Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 *et. seq.* which makes a violation of the Act a Class A Misdemeanor (740 ILCS 110/16) and also expressly provides that anyone aggrieved by violation of the Act may sue for damages, etc. (740 ILCS 110/15).

pressures through a statutory framework of criminal fines, a period of incarceration, and licensure suspension. Clearly, these statutory enforcement provisions are not "so deficient" that it is "necessary" to imply a private right of action "in order to effectuate the purpose of the Act." *Fisher*, 188 Ill. 2d at 467.

Nor is there any merit to plaintiff's tortured assertion that 5/8-101(e) supports an implied private right of action for a violation of 5/8-101(c). (Pl. Br. 7). Section 5/8-101(e) simply makes clear that the required financial responsibility filings under Chapter 8 must provide that the vehicle owner is financially responsible for the operation of the vehicle, even though at the time of the accident the vehicle is being operated by someone who is not the owner. Here, both PTI and its employee driver were insured under the ACE policy (C183-84 V1), and PTI was liable for the driver's conduct under the doctrine of *respondeat superior*. This is why plaintiff originally filed a Law Division action against PTI and its driver (C39 V 1), only to dismiss the action when it became apparent that the accident was caused solely by the negligence of the other driver Dwayne Bell. (C205, C217 V1).

D. There is Also a Complete Absence of any Applicable Tort Analog for an Implied Private Right of Action Alleging a Violation of Section 5/8-101(c).

There is a second independent ground supporting the Appellate Court's holding that a private right of action should not be judicially implied under 5/8-101(c). See *People v. Williams*, 2016 IL 118375, ¶ 2 (affirming the appellate court "albeit for a different reason than that on which the appellate court relied"). PTI's

alleged violation of 5/8-101(c) did not cause plaintiff any tortious harm. A violation of the statute is not a tort and does not give rise to a "tort analog" required for implication of a private right of action. See *e.g.*, *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 129-321 (1997); *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 231 (1999); *Abbasi ex rel. Abbasi*, 187 Ill. 2d at 399; *Gassman v. Clerk of the Circuit Court of Cook County*, 2017 IL App (1st) 151738, ¶¶ 24-26; *Midwest Medical Records Association, Inc. v. Brown*, 2018 IL App (1st) 163230, ¶¶ 49-52.

In *Noyola*, 179 Ill. 2d at 130, this Court held that even where the "necessity" prerequisite is met, violation of a statute may give rise to an implied right of action only when a tort analog exists. This Court quoted Restatement (Second) of Torts § 874A (1979) as follows:

> "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.*" Restatement (Second) of Torts § 874A (1979). (Emphasis added). *Id.*

Thereafter, in *Spagnolo*, 186 Ill. 2d at 231, this Court reiterated that:

> "[I]n Illinois, an implied private right of action under a statute is a means by which a plaintiff may pursue *a tort action.* If a statute is construed as providing an implied private right of action, the plaintiff may pursue a *tort action* against a defendant *whose violation of the statute proximately caused injury to the plaintiff."* *Id.* at 231. (Emphasis added) (Citation).

Thus, a plaintiff who urges judicial implication of a private cause of action must do more than satisfy the four point paradigm set out in *Metzger* and *Fisher.* Plaintiff must also be able to demonstrate violation of a statute "designed to protect human life or property," or a statute whose violation can otherwise serve as a predicate for some existing tort action, failing which no civil remedy may be implied. *Id.* at 130. See also, *Abbasi ex. rel Abbasi*, 187 Ill. 2d at 399 (summarizing prior cases and their "tort analog[s]") (Harrison, J. dissenting). Indeed, plaintiff's futile attempt to distinguish *Fisher* and *Metzger* on the ground that this Court did not want to expand the tort of retaliatory discharge (Pl. Br. 8-10) further underscores the importance of the tort analog requirement.

Here, the only tort action which survived dispositive motions was plaintiff's suit against the negligent driver Dwayne Bell. (C34 V1) (A. 67). It was Dwayne Bell's violation of the traffic laws "designed to protect human life or property" that proximately caused the bodily injuries for which plaintiff seeks to recover. In contrast, PTI's alleged violation of 5/8-101(c) does not give rise to an action in tort or any "cause of action analogous to an existing tort action." *See Parra v. Tarasco, Inc.*, 230 Ill. App. 3d 819, 827 (1st Dist. 1992), affirming the dismissal of an action under the Choke-Saving Methods Act because even if a private right of action could be implied under the four factors test, plaintiff still could not demonstrate that the statutory violation was the proximate cause of decedent's death. Likewise here, PTI's failure to obtain the additional UM/UIM

insurance mandated by 5/8-101(c) was not a cause of plaintiff's alleged auto-accident injuries.

In sum, on either or both of the above grounds – the lack of "necessity" and/or the absence of a tort analog – this Court should affirm the Appellate Court's opinion which concluded that Chapter 8's enforcement mechanisms were such that "[w]e cannot say that these statutory penalties are so deficient that it is necessary to imply a private right of action to effectuate the statute's purpose." (Opinion, ¶ 21) (Pl. A. 9-10) (A. 223-24).

II. The Appellate Court's Decision Can Also Be Affirmed on the Ground that 625 ILCS 5/8-101(c) Does Not Apply to PTI's 6-Passenger Vans.

This Court should also affirm the Appellate Court on the additional ground that 5/8-101(c) does not apply to PTI's 6-passenger vans. See *Williams*, 2016 IL 118375, ¶ 2.

A. Standard of Review.

This Court reviews statutory construction issues *de novo*. *Williams*, 2016 IL 118375, ¶ 14; *Hooker v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 2013 IL 114811, ¶ 15.

B. The Meaning of "A Vehicle Designed to Carry 15 or Fewer Passengers" Is Ambiguous and Should Be Interpreted Under the "Rule of Lenity" Not to Apply to PTI's 6-Passenger Vans.

1. The rule of lenity.

Section 5/8-101(c) is penal in nature; its violation is declared to be a Class A misdemeanor by 625 ILCS 5/8-116, punishable by fine and imprisonment. *See*

730 ILCS 5/5-4.5-55(a)-(e). If a penal statute is subject to two different interpretations and neither is unreasonable so that persons of ordinary intelligence may disagree as to the statute's application, the ambiguity will be resolved in a manner that avoids imposition of a criminal penalty. This is the "rule of lenity." *Williams*, 2016 IL 118375, ¶ 31 (requiring that a statutory ambiguity in a penal statute be resolved in a manner which favors the party subject to a criminal conviction for a statutory violation).

2. "A vehicle designed to carry 15 or fewer passengers" is inherently ambiguous.

Does "*a* vehicle designed to carry 15 or fewer passengers" mean a vehicle designed to carry a maximum of 15 passengers, which may at times be used to carry fewer than 15? Or should the statute's specific reference to a singular vehicle design be ignored and the statute expansively read to include any and all vehicles which carry fewer than 16 passengers, such as 5-passenger sedans or even a 2-person coupe? Despite the statute's emphasis on a singular vehicle's 15-passenger design capacity, marked by the use of the indefinite article "a" (meaning "one sort of,"[5] or "any one of some class or group" [6]), the circuit court read "a" as "any and all" vehicles, concluding that the latter and more sweeping meaning was clear and without any ambiguity. (C803-05 V4) (A. 4). However, the plaintiff's

[5] Webster New World Dictionary of the American Language (Student ed.).

[6] Random House Dictionary of the English language (College ed.).

and the Secretary's briefs and arguments below underscore the very ambiguity in the statute that the circuit court chose to ignore.

For example, plaintiff herself argued in the circuit court (C515 V3) that 5/8-101(c) applied only to employees being transported in "a vehicle that has the capacity of up to 15 passengers." Similarly, in attempting to offer a rational legislative basis for the unique UM/UIM burden imposed by 5/8-101(c), the Secretary posited that the statute was a safety regulation necessitated by the fact that 15-passenger vans presented special dangers. (C236, C241 V1). As evidence of this proposition, the Secretary referenced federal safety studies documenting the unique rollover potential of vans designed to carry 15 passengers. (C361, 364-65 V2) (A. 79-127). PTI's 6-passenger vans do not have a "capacity up to 15 passengers." Thus, plaintiff's and the Secretary's own interpretations of the vehicle design addressed by the statute would exclude all of the vehicles in PTI's 6-passenger van fleet.

PTI acknowledges that the construction of a statute is a question of law, *Williams*, 2016 IL 118375, ¶ 14, and that such legal questions are not subject to "admission" by any party. *Sperl v. Henry*, 2018 IL 123132, ¶ 36; *Harris v. Minardi*, 74 Ill. App. 2d 262, 266 (2d Dist. 1966); *In re Marriage of Osborn*, 206 Ill. App. 3d 588, 594 (5th Dist. 1990); *Hunter Trial Handbook for Illinois Lawyers – Civil*, Vol. 2, p. 311 (2014-15 ed.). However, PTI does not offer plaintiff's and the Secretary's interpretations of the statute as binding admissions, but as persuasive evidence of the statute's inherent ambiguity.

"A statute is ambiguous if it is capable of more than one reasonable interpretation." *In re B.L.S.*, 202 Ill. 2d 510, 515 (2002). The statutory interpretations proffered by the plaintiff and the Secretary below confirm that is true here, as their interpretations are wholly consistent with PTI's claims of ambiguity. (C827 V4) (A. 50).

Given such ambiguity and the penal nature of Chapter 8 of the Vehicle Code, the rule of lenity clearly applies and means that the extraordinary UM/UIM insurance coverage requirements of 5/8-101(c) should not be read to include PTI's 6-passenger van fleet. See *Williams*, 2016 IL 118375, ¶¶ 30-31, where this Court applied the rule of lenity to interpret an ambiguous criminal statute in favor of a lesser sentence. *Accord People v. Jones*, 223 Ill. 2d 569, 581 (2006).

Alternatively, as set forth below, the statute should be found unconstitutionally vague as applied to PTI's 6-passenger vehicles. *People v. Jihan*, 127 Ill. 2d 379, 389 (1989).

PTI'S REQUEST FOR CROSS-RELIEF PURSUANT TO RULE 318(a)

III. 625 ILCS 5/8-101(c) Is Unconstitutional.

A. This Court Should Decide the Constitutional Issues.

If this Court holds that 5/8-101(c) does not give rise to an implied right of action for its violation, it is not obligated to reach the issue of whether 5/8-101(c) is unconstitutional. *Gonzalez v. Union Health Services, Inc.*, 2018 IL 123025, ¶ 19. However, this self-imposed restraint is not a limitation on this Court's power to decide constitutional issues where circumstances otherwise justify constitutional

review. *Central City Educ. Ass'n, IEA/NEA v. Illinois Educational Labor Relations Bd.*, 149 Ill. 2d 496, 524-25 (1992) (constitutional issue decided "in the interest of judicial economy" and likelihood it would arise again on remand); *People v. Stechly*, 225 Ill. 2d 246, 263 (2007) (deciding constitutional issues where that would be the "most efficient route" of review).

Furthermore, a declaratory judgment action should not be restricted by unduly technical interpretations of law when a constitutional challenge therein portends "the ripening seeds of litigation." *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 383-84 (1997) (citation). See also *Illinois Gamefowl Breeders Assn. v. Block*, 75 Ill. 2d 443, 452 (1979); *Miles Kimball Co. v. Anderson*, 128 Ill. App. 3d 805, 807 (1st Dist. 1984).

Here, even if it is found that plaintiff has no implied private right of action against PTI, PTI still faces the dilemma of incurring the substantial cost of the extraordinary UM/UIM coverage required by 5/8-101(c) (now doubled from $250,000 to $500,000) or risking criminal fines, imprisonment, and the loss of its operating privileges. See *Best*, 179 Ill. 2d at 383-84, where this Court held that it would review the constitutionality of a statute that will affect a party's future course of action. Moreover, PTI, plaintiff, and the Secretary[7] have already litigated the constitutional issues raised by PTI's counterclaim over a course of years in two courts, and the circuit court actually ruled on the constitutional issues.

[7] This Court has already acknowledged the Secretary's right to move for leave to intervene in order to respond to PTI's constitutional arguments. See October 23, 2018 Order (A. 200).

See *People v. Carpenter*, 228 Ill. 2d 250, 264-65 (2008) (where this Court chose to review constitutional issues prematurely decided by the appellate court).

B. Standard of Review.

The issue of whether a statutory provision violates the Illinois or U.S. Constitutions is reviewed *de novo*. *Moline School Dist. No. 40 Board of Education v. Quinn*, 2016 IL 119704, ¶ 15. Likewise, an order granting a motion to dismiss under 735 ILCS 5/2-619 is reviewed *de novo*. *Chicago Tribune Co. v. Board of Educ. of City of Chicago*, 332 Ill. App. 3d 60, 64 (1st Dist. 2002). Also, a finding of unconstitutionality, sought by PTI, may be made by this Court in reviewing a dismissal order under 2-615 or 2-619. *Board of Educ. of Peoria School Dist. No. 150 v. Peoria Federation of Support Staff, Security/Policeman's Benevolent and Protective Ass'n. Unit No. 114*, 2013 IL 114853, ¶ 60 (order dismissing plaintiff's complaint alleging unconstitutional special legislation reversed with an order entering declaratory judgment that the statute was unconstitutional).

C. The Statute is Unconstitutionally Vague as to the Vehicles Covered by the Additional UM/UIM Insurance Requirements.

Under the due process clauses of the Illinois and U.S. Constitutions, U.S. Const., Amend. XIV, Ill. Const., Art. 1, Sec. 2 (A. 172-73), a penal statute, such as 5/8-101(c), must meet two basic criteria: First, it "must be sufficiently definite so that it gives persons of ordinary intelligence a reasonable opportunity to distinguish between lawful and unlawful conduct." Second, it "must adequately define the criminal offense in such a manner that does not encourage arbitrary and

discriminatory enforcement." *City of Chicago v. Morales*, 177 Ill. 2d 440, 449 (1997) (citations); *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983). As stated in *Morales* at 449-50:

> "Due process guarantees this adequate notice of proscribed conduct so that ordinary persons are not required to guess at a law's meaning but, rather, can know what conduct is forbidden and act accordingly. 'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as what the State commands or forbids.'" *Id.* (Citations).

PTI's counterclaim asserted that 5/8-101(c)'s reference to "a vehicle designed to carry 15 or fewer passengers" is "unconstitutionally vague and uncertain in violation of the guarantees of due process contained in the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 2 of the Illinois Constitution." (C827 V4). In Point II.B., *supra*, PTI urged that given this uncertainty and the rule of lenity, 5/8-101(c) should be interpreted not to apply to PTI's 6-passenger vans. However, in the event this Court determines that such statutory interpretation rules are not applicable here, then PTI hereby incorporates the arguments made in Point II. B., *supra*, as grounds for this Court to find that the statute is unconstitutionally vague and uncertain as applied to PTI's 6-passenger vans. See *Jihan*, 127 Ill. 2d at 389, holding that the Medical Practice Act's prohibition of unlicensed midwifery "did not clearly prohibit" the defendant's conduct in assisting with the birth of a child, and therefore "the Act was unconstitutionally vague as applied to appellee in that it did not provide sufficient notice that appellee's conduct in this case was prohibited."

Likewise, given the ambiguity of 5/8-101(c)'s singular reference to "a vehicle designed to carry 15 or fewer passengers," it cannot be said that the statute's extraordinary UM/UIM limits "clearly apply" to PTI's 6-passenger vans. The statute simply does not give "persons of ordinary intelligence a reasonable opportunity to distinguish between lawful and unlawful conduct," and it fails to "adequately define the criminal offense in such a manner that does not encourage arbitrary and discriminatory enforcement." *Morales*, 177 Ill. 2d at 449 (citations). As such, 5/8-101(c) is in violation of the due process clauses of the Illinois and U.S. Constitutions. *Kolender*, 461 U.S. at 353-54, 357-58, 361-62.

D. Section 5/8-101(c) Violates the Special Legislation Prohibition in the Illinois Constitution.

The Illinois Constitution includes this explicit check on the potential abuse of legislative power:

> "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.

"Laws are general and uniform when alike in their operation upon all persons in like situation"; they are "special" if they "impose a particular burden or confer a special right, privilege or immunity upon only a portion of the people of the State." *Board of Education*, 2013 IL 114853, ¶ 48 (citations). Thus, our Constitution's prohibition against "special laws" requires that laws "shall operate alike in all places and on all persons in the same condition." *Bridgewater v. Hotz*, 51 Ill. 2d 103, 109-10 (1972) (citations). *Accord Allen v. Woodfield Chevrolet,*

Inc., 208 Ill. 2d 12, 32-34 (2003); *Moline School Dist. No. 40 Board of Education*, 2016 IL 119704, ¶ 21. Indeed, "[t]he hallmark of an unconstitutional classification is its arbitrary application to similarly situated individuals without adequate justification or connection to the purpose of the statute." *Best*, 179 Ill. 2d at 396 (1997).

This Court has consistently honored Article IV, § 13's prohibition by invalidating legislation which confers a special benefit, or imposes a particular burden, on a special or restricted group without a rational justification for singling out that group from other similarly situated persons or entities. *See Best*, 179 Ill. 2d at 394-96; *Allen*, 208 Ill. 2d at 21, 32-34, and the numerous cases cited therein.

1. The "special privilege" conferred and the "particular burden" imposed by 5/8-101(c) are in derogation of pre-existing general laws.

The 2006 statutory amendment at issue here – 625 ILCS 5/8-101(c) – is an egregious example of the very kind of legislative favoritism which is prohibited by Article IV, § 13. The amendment not only confers special privileges and imposes particular burdens without regard to others who are similarly situated, but it does so in derogation of pre-existing general laws, which previously regulated the same subject matters in an even-handed fashion.

First, the amendment purposefully abolishes the uniformity heretofore found in that part of Chapter 8 of the Illinois Motor Vehicle Code which required an identical showing of "financial responsibility" from all motor vehicle operators who transport passengers for hire. Moreover, the amendment also eliminates the

uniform application of the Illinois Insurance Code which previously required that all Illinois motorists secure minimum UM/UIM insurance coverage in like amounts – $20,000 per person, $40,000 per accident. See, 215 ILCS 5/143a and 5/143a-2(2); 625 ILCS 5/7-203.

And why was the uniform reach of these pre-existing general laws compromised? According to the amendment's own language, so that a very limited group of passengers could enjoy special UM/UIM benefits if injured riding in a contract carrier's vehicle "designed to carry 15 or fewer passengers." 5/8-101(c). Indeed, if there was any uncertainty concerning the narrow class of passengers favored by the amendment, it was certainly resolved by later legislative largess. In 2016, the legislature again raised the UM/UIM benefits for this privileged class of passengers – this time from $250,000 to $500,000 per passenger – and also made it expressly clear that "railroad employees" were the legislature's intended beneficiaries. P.A. 99-979. Then, in 2017, the legislature expressly made the Illinois railroad industry responsible for verifying that their contract carriers secured the exorbitant UM/UIM coverage. P.A. 100-458).

Prior to the passage of 5/8-101(c), Chapter 8 cast a broad indiscriminate regulatory net focused on commercial vehicle operators' potential liability to their passengers. All commercial passenger carriers listed therein were required to demonstrate that they were financially viable. Each was to file proofs with the Secretary evincing that they were responsible operators with at least $250,000

available to satisfy any liability finding that might be entered against them for their own negligence. See 625 ILCS 5/8-102 through 5/8-112. (A. 166-70).

However, 5/8-101(c) put an end to the uniformity which was a hallmark of former 5/8-101. To be sure, all regulated passenger carriers were still required to make a showing that they were financially viable operators by demonstrating that they could satisfy a $250,000 personal injury judgment against them. But 5/8-101(c) required particular "contract carriers," who operate particular vehicles transporting particular passengers, to do much, much more. They were burdened with an additional unique obligation – to demonstrate that they had secured UM/UIM insurance in the amount of $250,000 (now $500,000) per passenger – far in excess of the $20,000/$40,000 UM/UIM limits of the Illinois Insurance Code which applies to all other motor vehicle operators, including all other operators who transport passengers for hire.

Thus, just as in *Allen*, 208 Ill.2d at 33, "the remedy [provided by the legislature] turns the statute on its head." Rather than further assure that all operators of vehicles for hire and their passengers are treated alike, the amendment introduced invidious discrimination favoring only one select group of commercial passengers and burdening only one select group of commercial vehicle operators.

2. A new general law could have been enacted.

As set forth above, the UM/UIM coverage generally required for vehicles operating on Illinois highways at the time of plaintiff's accident – including vehicles that transported passengers for hire – was $20,000 per person/$40,000 per

occurrence. 215 ILCS 5/143a; 5/143a-2(2); 625 ILCS 5/7-203. If those levels were deemed inadequate to protect Illinois motor vehicle passengers, the legislature could have enacted a constitutional general law that imposed increased liability coverage on all drivers or which increased the UM/UIM coverage required of all vehicle operators. However, the legislature did not even make the increase in required UM/UIM coverage applicable to all vehicle operators transporting passengers for hire. Rather, the legislature limited this onerous railroad-union-sponsored special amendment – increasing required UM/UIM coverage to $250,000 per passenger – "to a contract carrier transporting employees in the course of their employment ...in a vehicle designed to carry 15 or fewer passengers." 5/8-101(c).

The special benefit was truly extraordinary in amount, as well as in effect. Discrimination was not the only evil it engendered; it also opened the door to nonsensical results. Liability coverage required of commercial carriers by Chapter 8 remains limited to a total of $300,000 *per vehicle* (see 5/8-109). Thus, the UM/UIM coverage obligation imposed by 5/8-101(c) of $250,000 *per passenger* introduced random and inconsistent consequences. For example, in an accident caused by the negligence of an uninsured motorist involving injuries to 15 passengers in a contract carrier's van, *each passenger* would have more than ten times the mandated insurance protection than if the accident was caused by the negligence of the contract carrier's own driver!

As this Court noted in *Nelson v. Artley,* 2015 IL 118058, ¶15, the purpose of all Illinois financial responsibility laws "is to provide members of the public with some modicum of protection against negligent drivers of these various types of vehicles" (citations). But 5/8-101(c) does no such thing. Instead, it imposes a financial burden on particular "contract carriers" which has no relationship to the safety of their operations or the care taken by their drivers. No other passenger in a commercial vehicle covered by Chapter 8 is granted such a legislative benefit – a boon totally unconnected to the safety of the "contract carrier's" operations.

3. The extraordinary UM/UIM insurance requirements imposed by section 5/8-101(c) discriminate against and in favor of select groups and constitute an arbitrary classification.

This Court has held that determining whether a statute violates the constitutional prohibition against "special laws" requires a two part analysis:

1. The Court must determine first whether the statutory classification at issue "discriminates in favor of a select group." *Allen*, 208 Ill. 2d at 22.
2. If it does, then the Court "must go on to consider whether the classification is arbitrary," that is whether it "discriminate[s] in favor of a select group without a sound and reasonable basis." *Moline School Dist. No. 40 Board of Educ.*, 2016 IL 119704, ¶¶ 23, 35.

Here, the legislature's special legislation breach could not be more apparent. Section 5/8-101(c) not only favors a select group of vehicle passengers,

but it also burdens a select group of vehicle operators – all "without a sound and reasonable basis."

a. The passengers favored and the contract carriers burdened by the statute are each a "select group."

Section 5/8-101(c) openly discriminates. Its announced purpose is to favor a "select group," *i.e*, only those employees transported in the course of their employment by contract carriers in a vehicle designed to carry 15 or fewer passengers. Those burdened are also select. The statute does not even apply to other vehicle operators for hire who transport other passengers pursuant to Section 8, such as:

- Motor vehicle contract carriers who transport passengers other than employees in the course of their employment, such as, hotel or rental car vans, airport transports and other courtesy vehicles;
- Motor vehicle carriers who transport and charge employees in the course of their employment on a per-ride basis, such as taxis, limousines, and other livery operators;
- Motor vehicle carriers who operate medical transport vehicles identified in 5/8-101.1;
- Motor vehicle carriers who transport minors to and from educational or recreational facilities as identified in 5/8-101(b); and
- Motor vehicle contract carriers who transport employees in the course of their employment in vehicles with a capacity of more than 16 persons.

None of the passengers in any of these motor vehicles, not even children or the sick and infirm, are favored with the increased UM/UIM coverage set forth in 5/8-101(c), and none of the operators of the vehicles who transport them is burdened with providing such additional UM/UIM coverage.

b. The statute's language and legislative history show that its classifications are intentionally discriminatory, wholly arbitrary, and without any legitimate state interest.

Under the two-pronged analysis established by this Court's precedent, the next determination is whether the special classifications contained in 5/8-101(c) are "arbitrary," *i.e.*, whether they are "rationally related to a legitimate state interest." *Moline School Dist. No. 40 Board of Educ.*, 2016 IL 119704, ¶ 26. Here the statute's arbitrary nature is exceptionally clear. Both the statute's terms and its legislative history conclusively demonstrate that the only "interest" to be served by the statute was an insular one – it was promulgated to serve railroad union membership. (C915-16 V4).

To be sure, the Secretary argued below that the actual legislative history and the legislators' obvious pro-union motivation were wholly irrelevant. According to the Secretary, any hypothetical rational basis that the imagination could conjure could serve as an acceptable alternative legislative purpose behind section 5/8-101(c). However, as made clear in *Allen*, 208 Ill. 2d at 25, a court, in reviewing a special legislation challenge, should undertake a "comprehensive review" of the statute's legislative history to determine the General Assembly's intent where, as here, "the reason for the classification is not apparent from the

language of the statute itself." Indeed, the Attorney General, who here represents the Secretary, has previously concurred in that approach, opining that a court should not adopt an interpretation of a statute that is belied by its actual legislative history. See 2006 Ill. Atty. Gen. Op. 005, 2006 WL 3956018 (Ill. A.G.) (A. 194-98).

Significantly, the Illinois legislature could not have directed railroad employers to provide the same UM/UIM benefits to their employees which are set forth in 5/8-101(c). Plaintiff's entitlement to specified no-fault benefits in the event she was injured in an on-job auto accident was already established under a national agreement formulated between the railroads and their employees' unions. (C859-66 V4) (A. 128-30). It is not the province of state legislatures to undercut collective bargaining at the federal level. See *520 S. Michigan Ave., Assoc., Ltd. v. Devine*, 433 F.3d 961, 965 (7th Cir. 2006); *520 S. Michigan Ave. Assoc., Ltd. v. Shannon*, 549 F.3d 1119, 1132-33, and fn. 11 (7th Cir. 2008). As set forth in the cases cited below, Congress' purpose in passing the Railway Labor Act was to promote stability regarding matters of pay, collateral benefits, and working conditions in the railroad industry. Thus, the formation of collective bargaining agreements and efforts to secure them are preempted by the Railway Labor Act which requires a labor-management negotiating process, as exemplified by the aforementioned "Off-Track Vehicle Accident Benefits" provision in the national labor agreement between the railroads and their unions – the very agreement through which plaintiff herein received substantial no-fault benefits from UP.

(C6-8; C14-27 V1; C859-66 V4; C1025-26, V5; A. 128-30). See, 45 U.S.C. § 152 (2012); *Koehler v. Illinois Cent. Gulf R.R.*, 109 Ill. 2d 473 (1985), *cert. den.*, 478 U.S. 1005 (1986); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252-53 (1994). See also, *Devine*, 433 F.3d at 965.

Nonetheless, the railroad union lobbyists proved to be inventive tacticians. To avoid the preemption bar, the unions lobbied the Illinois legislature for additional no-fault benefits to be provided, not by the railroads themselves, but by railroad surrogates – the railroad's "contract carriers." (C915-16, V4). In this way, their members would receive additional no-fault benefits without offering any labor concessions in return. Indeed, the "politics" behind 5/8-101(c) has much in common with the Illinois legislation at issue in *Devine*, wherein the Illinois legislature was roundly criticized for enacting a state statute that criminalized strike-breaking conduct in a manner that conflicted with and was preempted by federal labor laws. *Devine*, 433 F.3d at 965.

The railroad unions' legislative agenda, evident enough in the 2006 amendment's legislative history (C915-16 V4) (A. 75-78), is also manifest in the recent 2016 and 2017 amendments to 5/8-101(c) – first increasing the required UM/UIM coverage limits to a stunning "$500,000 per passenger," while making it expressly clear that "railroad employees" are the intended beneficiaries of the statute; and later imposing enforcement obligations on the rail carriers themselves. Effective January 1, 2018, 5/8-101(c) now provides:

> "(c) This Section also applies to a contract carrier transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers. As part of proof of financial responsibility, a contract carrier transporting employees, *including but not limited to railroad employees*, in the course of their employment is required to verify hit and run and uninsured motor vehicle coverage, as provided in Section 143a of the Illinois Insurance Code, and underinsured motor vehicle coverage, as provided in Section 143a-2 of the Illinois Insurance Code, in a total amount of not less than $250,000 per passenger, except that beginning on January 1, 2017 the total amount shall be not less than $500,000 per passenger. *Each rail carrier that contracts with a contract carrier for the transportation of its employees in the course of their employment shall verify that the contract carrier has the minimum insurance coverage required under this subsection (c).*" (Emphasis added).

The legislative history for these recent amendments also made no pretense that they were intended to benefit anyone but railroad union employees. See State of Illinois, 99th General Assembly, House of Representatives Transcription debate, S.B. 2882, 5/26/16, p. 93 (A. 191-92) wherein the increase of UM/UIM limits from $250,000 to $500,000 is described as applicable "where they're transporting railroad employees back and forth from the end of the line," and State of Illinois 100th General Assembly, Senate Transcript, S.B. 1681, 5/11/17, p. 32 (A. 193) wherein the 2017 amendment obligating rail carriers to verify that contract carriers have the requisite UM/UIM limits was identified as an amendment for the benefit of the "United Transportation Union." In short, through their lobbying, the unions completed their "end run" around federal law, and the railroad industry is now responsible for assuring that their employees are

provided with the additional no-fault UM/UIM benefits that union membership desired.

Under *Allen*, 208 Ill. 2d at 25, this legislative history cannot be ignored. Indeed, it should lead to the same conclusion reached in *Allen*, wherein this Court held that amendments to the Consumer Fraud and Deceptive Business Practices Act, which imposed unique substantive and procedural requirements for consumer fraud claims against new and used vehicle dealers, violated the constitutional prohibition against special legislation. *Id.* at 32-34. Therein, this Court concluded that there was no reasonable basis to distinguish vehicle dealers from dealers of other products who might also be subject to consumer fraud claims. *Id.* at 32-33. Thus, the statute had an unconstitutional and "artificially narrow focus, designed primarily to confer a benefit on a particular group, rather than to promote the general welfare." *Id.* at 33.

The same analysis compels the same result here. The extraordinary UM/UIM insurance coverage requirements imposed by 5/8-101(c) are clearly designed to benefit a "particular group" of passengers and to burden a "particular group" of vehicle operators, "rather than to promote the general welfare."

4. The hypothetical rationales for the statute are not sustainable.

Ignoring the legislative history of 5/8-101(c), the Secretary and the circuit court posited hypothetical bases for the statute – safety (Secretary) and lack of choice (circuit court). The Secretary was first to offer such hypothetical support for the statute by relying on federal safety studies that concluded that 15-passenger vans were more likely to roll over in vehicle accidents than were other motor vehicles. (C234, 241 V1; C361, 364-65 V2). *See* Analysis of Crashes Involving 15 Passenger Vans" DOT HS 809 735, pp. 1-2, 13, 17, 31-32. (C599-645 V3) (A. 79-127). Plaintiff also endorsed this 15-passenger van safety rationale. (C515 V3).

However, the reported proclivity of 15-passenger vans to roll over has no rational connection to the extraordinary UM/UIM coverage imposed by the statute. A tendency to roll over in a single vehicle accident may raise *liability insurance* issues, but, by definition, a single vehicle rollover accident does not even involve another driver (uninsured, underinsured or otherwise).

Nonetheless, the Secretary persisted in offering safety as a conceivable rationale for 5/8-101(c). (C364-65 V2). But again, the Secretary's intransigence ignored the fact that whatever rollover danger is inherent in 15-passenger vans exists for all 15-passenger vans, not just those being operated by a contract carrier transporting employees in the course of their employment. Moreover, a contract carrier transporting employees in the course of their employment in a 15-

passenger van is no more likely to have an accident with an uninsured or underinsured motorist than any other operator of a 15-passenger van. Yet, none of the other operators of 15-passenger vans in Illinois are subjected to the onerous UM/UIM coverage requirements imposed by 5/8-101(c), and none of their passengers is entitled to more than the statutory minimum $20,000/$40,000 (now $25,000/$50,000) UM/UIM coverage.

Moreover, if as the Secretary and plaintiff ultimately argued (and the circuit court held), the extraordinary UM/UIM insurance requirements imposed by 5/8-101(c) apply whether a "contract carrier" is operating a 15-passenger van or, as here, a 6-passenger van, or even a 2-person coupe, then the Secretary's 15-passenger van rollover rationale cannot conceivably afford a rational basis for 5/8-101(c), and even less for its application to PTI. Thus, even if the particular safety concerns raised by the use of 15-passenger vans had some rational connection to the imposition of the extraordinary UM/UIM coverage imposed by 5/8-101(c), the statute would still be unconstitutional as applied to PTI, because PTI operates only 6-passenger vans and does not own or operate a single 15-passenger van. (C649-53, C655-57 V3). *See Sulzberger v. County of Peoria*, 29 Ill. 2d 532, 541-42 (1963) (zoning ordinance unconstitutional as applied to landowners' tract); *People v. Miller*, 202 Ill. 2d 328, 341 (2002) (sentencing statute unconstitutional as applied to juvenile defendant). Indeed, in documenting different vehicles' rollover proclivities, the federal study favorably compared the stability of smaller vehicles to the rollover tendencies of 15-passenger vans. (C619-27 V3) (A. 109-17). Thus,

as succinctly observed by the circuit court below: "The State has offered no basis relating to safety concerns with 6-seater vans." (C807 V4) (A. 7).

However, the circuit court's alternative hypothetical rationale for the statute – that employees provided transportation by their employers "have no choice in their employer's selection of contract carriers" (C806 V4) (A. 6) – had no better basis. First, it ignores 5/8-101(c)'s express language and its legislative history. Second, it makes two unfounded presumptions: 1) it presumes that all other passengers who ride in all the other vehicles for hire covered by Chapter 8, such as limousines, taxi cabs, hotel or rental car vans, airport transports, medical transport vehicles, and vehicles transporting children to or from educational or recreational facilities, *do have such a choice* and that such passengers routinely consider the extent of each prospective carrier's UM/UIM coverage before making their travel vehicle elections; and 2) it presumes that all those other operators transporting passengers for hire do maintain UM/UIM insurance coverage higher than the minimum required by the Illinois Insurance Code, so that the employee beneficiaries of 5/8-101(c) suffer in comparison.

Neither presumption has any legal, logical or record support. No busy traveler (employee or otherwise), much less patients transported by ambulance or children being transported to and from educational or recreational facilities, have the time, opportunity or wherewithal to determine the UM/UIM coverage of the operators of the vehicles in which they ride. Furthermore, given that the Insurance Code permits all other entities who transport passengers for hire to carry the

minimum $20,000/$40,000 (now $25,000/$50,000) UM/UIM limits, the only reasonable presumption is that such is the amount of coverage they carry.

Moreover, to the extent any would-be passenger is concerned about the UM/UIM coverage applicable to any vehicle in which they ride, Illinois precedent has repeatedly recognized that they can best alleviate that concern by purchasing additional UM/UIM coverage under their own automobile policy that will insure them in the event they are in an accident while riding in another's vehicle. *See Ellis v. Sentry Ins. Co.*, 124 Ill. App. 3d 1068, 1073-74 (1st Dist. 1984); *Columbia Mut. Ins. Co. v. Herrin*, 2012 IL App (5th) 100037, ¶¶ 17-18; *Janes v. Western States Insur. Co.*, 335 Ill. App. 3d 1109, 1123-24 (5th Dist. 2001).

That is as true for the select beneficiaries of 5/8-101(c) as it is for any other passenger in a vehicle for hire. Indeed, as set forth above, railroad employees, in particular, are not a disadvantaged group in special need of a UM/UIM remedy. Quite the contrary, they already enjoy a special advantage over other travelers – under their national labor agreement, railroad employees already have no-fault coverage available from their railroad employers which, in plaintiff's case, obligated UP to pay her certain medical expenses and to underwrite plaintiff's lost wages by providing her with as much as a $1,000 a week for 156 continuous weeks. (C6-8, C14-27 V1) (C859-66) (A. 128-30, 201-14).

In sum, neither of the hypothetical explanations for the statute posited by the Secretary or the circuit court are rational, or even relevant. As documented by the legislative history discussion above, the Illinois legislature was not motivated

by considerations of "safety" or "lack of choice." (C915-16 V4; C1018 V5). Rather, the legislature's only motivation for enacting 5/8-101(c), as reflected in the legislative history and the statutory language (C915-16 V4; C1018 V5) (A. 75-78, 165-71, 191-93), was to reward determined union lobbying by giving railroad employees a special UM/UIM benefit not available to any of the other myriad of passengers who are transported daily in vehicles for hire or otherwise.

Here, while the unions' determined efforts on behalf of their membership were artful politics, the resulting legislation is a "narrow focus" statute "designed primarily to confer a benefit on a particular group, rather than to promote the general welfare." Therefore, 5/8-101(c) is a clear violation of the special legislation clause of the Illinois Constitution. *Allen*, 208 Ill. 2d at 30.

E. Section 5/8-101(c) Violates the Equal Protection Clause of the U.S. and Illinois Constitutions.

Just as 5/8-101(c) violates the special legislation prohibition contained in the Illinois Constitution, *supra*, it also violates the equal protection clauses of the Illinois and U.S. Constitutions because equal protection and special legislation challenges are to be determined under the same rational basis standard. Ill. Const. 1970, Art. I, § 2; U.S. Const. Amend. XIV. (A. 172-73). *General Motors Corp. v. State Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 30-31 (2007). *See, e.g.*, *Plyler v. Doe*, 457 U.S. 202, 216 (1982) and *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 439-40 (1985), both holding that state statutes that

discriminated against a small group of otherwise similarly situated persons or entities violated the equal protection clause of the U.S. Constitution.

CONCLUSION

For the reasons set forth herein, PTI respectfully requests that this Court affirm the Appellate Court on the grounds that Chapter 8 provides sufficient enforcement remedies so that it is not necessary to imply a private right of action for a violation of 5/8-101(c) and, in any event, a violation of the statute does not give rise to a tort analog required for implication of a private right of action. PTI also asks that this Court affirm the Appellate Court on the additional ground that the "rule of lenity" requires that the ambiguous 15-passenger vehicle reference in 5/8-101(c) be read as inapplicable to PTI's 6-passenger vans.

Finally, in view of the operating cost burden; the threat of criminal prosecution; and the loss of operating privileges imposed by 5/8-101(c), PTI also requests that this Court, in accord with *Board of Educ. of Peoria School Dist. No. 150*, 2013 IL 114853, ¶ 60, grant PTI cross-relief by declaring that 5/8-101(c) is unconstitutional on one or more of the grounds urged herein.

Respectfully submitted,

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Supreme Court Rule 341(c) Certification 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(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and the matters contained in the Separate Appendix, is 13,856 words using the Word Count provided in Microsoft Word.

Respectfully submitted,

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No. 123853

In The
Supreme Court of Illinois

MARY TERRY CARMICHAEL,
Plaintiff-Appellant,

v.

PROFESSIONAL TRANSPORTATION, INC., a foreign Corporation, d/b/a PTI
Defendant-Appellee,

and

ACE AMERICAN INSURANCE CO., a foreign corporation, and
UNION PACIFIC RAILROAD COMPANY, a foreign corporation,
Defendants.

PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI
Counter-Plaintiff-Appellee,

v.

MARY TERRY CARMICHAEL,
Counter-Defendant-Appellant,

and

JESSE WHITE, ILLINOIS SECRETARY OF STATE
Counter-Defendant.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-17-0075. There Heard on Appeal from the
Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 12 CH 38582
The Honorable Judge **Sophia H. Hall** Presiding.

SEPARATE APPENDIX OF THE DEFENDANT/COUNTER-PLAINTIFF-APPELLEE, PROFESSIONAL TRANSPORTATION, INC. CROSS-RELIEF REQUESTED

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APPENDIX

APPENDIX

TABLE OF CONTENTS

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Carmichael

v.

union pacific RR

No. 12-CH-38582

4/4/10
4426

ORDER

This matter coming to be heard for a ruling on defendant White's motion to dismiss, all parties being present, the court being advised in the premises:

(1) White's motion to dismiss the counterclaims against him is granted, per written order

(2) This case is set for status on February 25, 2015 at 9:30 am

Atty. No.: 99000

Name: Michael Dierkes

Atty. for: Jesse White

Address: 100 W. Randolph

City/State/Zip: Chicago, IL 60601

Telephone: 312-814-3672

ENTERED: JAN 30 2015

CLERK OF COOK COUNTY, IL
DEPUTY CLERK

Dated: 1/30/15

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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C 801

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL, Plaintiff, v. UNION PACIFIC RAILROAD COMPANY; a foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corporation d/b/a PTI; and ACE American Insurance Company, a foreign corporation Defendants.	Case No. 12 CH 38582 Hon. Sophia H. Hall
PROFESSIONAL TRANSPORTATION, INC., foreign corp., d/b/a PTI; Counter-Plaintiff/Defendant, v. MARY TERRY CARMICHAEL, Counter-Defendant/Plaintiff, and STATE OF ILLINOIS, Counter-Defendant.	

4946/D

DECISION

This case comes on before the Court on counter-defendant, the State of Illinois,' Motion to Dismiss the Counterclaim of counter-plaintiff Professional Transportation, Inc. (PTI), pursuant to 735 ILCS 5/2-615 and 2-619. PTI's Counterclaim challenges the constitutionality of certain provisions of the Illinois Vehicle Code, 625 ILCS 5/8-101(c) and 625 ILCS 5/8-116, that apply to a "contract carrier transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers." PTI admits that it is a contract carrier of employees.

802

Section 8-101(c) requires that such contract carriers "verify hit and run and uninsured motor vehic coverage, as provided in Section 143a of the Illinois Insurance Code, and underinsured motor vehicle coverage, as provided in Section 143a-2 of the Illinois Insurance Code, in a total amount of not less than $250,000 per passenger." Section 5/8-116 provides that ' ilure to do so is a Class A misdemeanor.

In Count I, PTI alleges the statutory provisions violate the Special Legislation Clause of th Illinois Constitution, Article 4, § 3. In Count II, PTI alleges those provisions violate the Equal Protection Clauses of the 14th Amendment of the United States Constitution and Article 1, § 2 of the Illinois Constitution, in that they unfairly single out contract carriers of employees using vehicles designed for 15 passengers or fewer. In Count III, PTI alleges the provisions violate the Due Process clauses of the 5th and 14th Amendments of U.S. Constitution and Article § 2 of the Illinois Constitution, on the basis that they are "unconstitutionally vague." In Count V, PTI alleges the statute violates the Commerce Clause of the U S. Constitution, Article 1, § 8.

Generally, courts begin any constitutional analysis with the presumption that the hallenged legislation is constitutional. *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 377 (Ill. 1997). The challenging party bears the burden to establish the statute's invalidity. *Id.* Courts have a duty to "sustain legislation whenever possible and resolve all doubts in favor of constitutional validity." *In re Marriage of Lappe*, 176 Ill. 2d 414, 422 (Ill. 1997)

ANALYSIS

I
Due Process – Vagueness (Count III)

The Court first addresses PTI's due process count because, if the Court finds the statute is unconstitutionally vague on its face, it need not reach the arguments on the equal protection, special legislation, or commerce clause counts.

Generally speaking, a statute is not unconstitutionally vague if it is explicit enough to serve as a guide to those who must comply with it. *GMC v. State Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 24 (2007). A court will only strike down a statute as vague when its terms are "so ill- d fined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of nt han any objective criteria or facts." *Id.* Where, as here, violation of the statute carries criminal penaltics, the statute must meet two basic criteria. First, the statute must be sufficiently definite such that it "gives persons of ordinary intelligence a reasonable opportunity to distinguish between lawful and unlawful conduct." Second, the statute must "adequately define the criminal offense in such a manner that does not encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 177 Ill. 2d 440, 449 (1997).

PTI alleged that the phrase "a vehicle designed to carry 15 or fewer passengers," and the phrase "[coverage] in a total amount of not less than $250,000 per passenger," are ambiguous. The State moves to dismiss Count III under § 2-615, arguing that both statutory phrases are sufficiently precise and quantitative.

A.

PTI first argues that the phrase "designed to carry 15 or fewer passengers" is ambiguous because it is capable of two reasonable interpretations, citing *In re BLS*, 202 Ill. 2d 510, 517 (2002). PTI argues that the statute does not make clear whether it applies only to vehicles with a designed capacity of 15 passengers, or also to smaller vehicles that are designed to carry a lesser capacity, such as PTI's 6-passenger vans. PTI argues that if the Court should find that the provision is ambiguous, then it should apply the "rule of lenity" and resolve this ambiguity in its favor, because PTI is accused of violating a criminal statute. *People v. Jones*, 223 Ill. 2d 569 (2006).

TI argues that its argument is buttressed by the State's own briefing on this motion. On the one hand, the State's due process argument posits that the statute clearly applies to a vehicle of any size that does not have a capacity for more than 15 people. On the other hand, in its equal protection argument (addressed more fully below), the State argues that one rational basis for the legislation could be particular concern about the safety of 15-passenger vans, which, according to a report from the National Transportation Safety Board that the State provides, are more dangerous than larger vehicles.

The State argues that the phrase "a vehicle designed to carry 15 or fewer passengers" is not vague. The State argues that the phrase refers to a vehicle of any size that does not have a capacity for more than 15 people. Thus, it clearly applies to both 15-passenger vans, as well as to smaller vans or cars, such as the 6-passenger vans PTI says it uses. The State argues the statute cannot also be reasonably interpreted to mean *only* 15-seater vans, as PTI argues, because that would render the "or fewer" language superfluous. A provision meant to apply only to 15-passenger vans would say "designed to carry 15 passengers," and omit the "or fewer" language.

This Court finds that the language "a vehicle designed to carry 15 or fewer passengers" is not constitutionally vague. On its face, the legislation explicitly refers to any vehicle designed to carry 15, or any number fewer than 15, passengers. Thus, it includes a 15-passenger van, a 6-enger van, and any other vehicle so long as its passenger capacity is not more than 15. The statute therefore meets the test cited in *Morales*, because it both distinguishes between lawful and unlawful conduct, and defines the criminal offense in in a way that does not encourage arbitrary and discriminatory enforcement.

B.

PTI, next, argues that the phrase "in a total amount of not less than $250,000 per passenger" violates due process because it does not make clear whether it applies to the maximum passenger capacity of a vehicle, or its actual capacity at the time of an accident.

The State argues that the language is not vague because it is not ambiguous and clearly requires $250,000 coverage for each passenger who could be in the vehicle at the time of an accident. Thus, for example, the State states that a vehicle with a capacity for 10 passengers could result in a maximum payout of $2.5 million of coverage for an accident where all 10 were injured in one occurrence. If fewer passengers were injured than the maximum the vehicle can hold, h n the coverage would still be $250,000 per person injured. Thus, the carrier must maintain coverage for the maximum number of passengers it carries in a vehicle.

The Court finds that the phrase requiring coverage of at least "$250,000 per passenger" is not vague. On its face, the phrase can only be reasonably understood to apply to the total number of passengers who could be occupying the vehicle and, therefore, could be at risk should there be an accident.

Accordingly, the Court grants the State's Motion to Dismiss as to Count III, finding that both of the challenged phrases are not vague and therefore do not violate due process of law.

II

Equal Protection and Special Legislation (Counts I and II)

Courts generally review special legislation claims under the same standards as equal protection claims. *GMC v. State Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 30-31 (2007). Moreover, in applying an equal protection analysis, courts apply the same standard under both the United States Constitution and the Illinois Constitution.

Where, as here, the statute in question does not affect a fundamental right or involve a suspect classification, the court applies the deferential "rational basis" test to the legislation. *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 393 (Ill. 1997). Under the rational basis test, the court will uphold the statute so long as the statutory classification is rationally related to a legitimate state interest. If the court can reasonably conceive of any set of facts that justify the statutory distinction, it will uphold the statute.

The State moves to dismiss Counts I and II under § 2-619, arguing that a conceivable rational basis exists to require a "contract carrier transporting employees in the course of their

employment" to carry higher levels of uninsured and underinsured motorist insurance coverage on vehicles designed to carry 15 or fewer passengers, than is required for other owners and vehicles.

A.

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.

The State argues that a rational basis for singling out contract carriers transporting employees, "in the course of their employment," is that the legislature could have been seeking to protect employees whose job duties require them to be transported by their employers. Plaintiff in this case, Mary Carmichael, and others who work for the railroad, ride in contract carriers provided by their employers to travel between job sites. The state cites various cases where certain special carriers, like taxi cabs, were constitutionally singled out. *Weksler v. 'ollins*, 317 Ill. 132, 139-40 (1925), *Millers v. National Insurance Company v. City of Milwaukee*, 503 N.W. 284 (Wisc. Ct. App. 1993).

This Court finds that the reasons articulated by the State provide a conceivable rational basis for the statute's requirement that contract carriers, who contract with employers to carry their employees in the course of their job duties, must purchase higher levels of uninsured/underinsured motorist insurance coverage than other vehicle owners are required to purchase. Such employees are being transported as part of their job, and have no choice in their employer's selection of contract carriers. PTI's argument that the legislature might have done more to protect these employees does not make the legislation irrational, because a statute need "not address every problem that might conceivably been addressed." *Crusius v. Ill. Gaming Bd.*, 348 Ill. App. 3d 44, 59 (1st Dist. 2004).

B.

PTI also argues that there is no conceivable rational basis to apply the statute to contract carriers of employees who use vehicles designed to carry 15 or fewer passengers, and that requiring carriers like PTI, who only uses 6-passenger vehicles, to bear this burden is arbitrary.

The State argues that a rational basis for the legislature to require enhanced uninsured and underinsured coverage for vehicles "designed to carry 15 or fewer passengers" is their belief that vehicles designed to carry 15 or fewer passengers are more dangerous than larger vehicles designed to carry more than 15 passengers, and therefore, higher levels of insurance would provide more protection to passengers in those vehicles. In support, the State attaches a document issued by the National Transportation Safety Board on October 15, 2002 entitled "Safety Report: Evaluation of the Rollover Propensity of 15-Passenger Vans," which concludes that 15-passenger vans are "involved in a higher number of single-vehicle accidents involving rollovers than are other passenger vehicles."

The State's evidence of dangerousness applies to 15-seater vans, but not to 6-seater vans, which are also covered by the legislation. The State has offered no basis relating to safety concerns with 6-seater vans. This Court, however, has determined that the statute has a rational basis in requiring contract carriers of employees to carry enhanced insurance coverage. PTI admits that it is a contract carrier of employees. PTI has not met its burden to show how the statute's vehicle-size distinction makes the statute otherwise arbitrary.

Accordingly, the Court grants the State's Motion to Dismiss as to Counts I and II, finding that a rational basis exists for requiring contract carriers of employees, who use vans designed for 15 or fewer people, to provide enhanced uninsured/underinsured motorist coverage.

III
Commerce Clause (Count IV)

A state statute is valid under the commerce clause if it "even handedly effectuates a legitimate local public interest, the effect on interstate commerce is only incidental, and the burden on commerce is not clearly excessive to the local benefits." *GMC*, 224 Ill. 2d at 27.

The State moves to dismiss Count IV under § 2-615. PTI alleges that the statute's insurance requirement is an "undue and unreasonable burden on interstate commerce" because "contract motor carriers, such as PTI . . . could not know how much underinsured motorist coverage to obtain in advance of operating, unless one refused to operate any fleet vehicle until each vehicle was fully occupied."

In its response brief, PTI takes a new position, arguing that the statute burdens interstate commerce because none of the neighboring states in which PTI operates have such a requirement. Thus, PTI argues that the statute requires it to maintain a higher level of coverage for vehicles that it operates both within and outside of Illinois.

The Court finds that the statute does not violate the Commerce Clause because PTI has not alleged more than an incidental burden on interstate commerce. Rather, PTI has alleged that its business is burdened by the legislation. The Commerce Clause "protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations." *Minn. v. Clover Leaf Creamery Co.*, 449 U.S. 456, 474 (U.S. 1981). Moreover, the burden PTI alleges – that it must maintain higher levels of coverage than it needs in other states – is not "clearly excessive to the local benefits," which protect employees being transported in the course of their employment.

Accordingly, the Court grants the State's Motion to Dismiss as to Count IV.

ENTERED
JUDGE SOPHIA H. HALL
JAN 30 2015
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Entered: _____
Judge Sophia H. Hall

Date: 1/30/15

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JUL 24 2015

MARY TERRY CARMICHAEL
PLTF

v.

UNION PACIFIC RR ET AL,
DEFS.

No. 12 CH 38582

5271
448

ORDER

THIS Cause coming to be heard for a Ruling on ~~PLTF~~ PTI's Motion to Dismiss Count I of Plaintiff's Complaint. IT IS HEREBY ORDERED:

1) The Court denies defendant PTI's Motion to dismiss Count I for the reasons stated in the written decision of 7-24-15.

2) This case is set for status on 8-21-15 at 9:30 am.

Atty. No.: 25553

Name: L.O. John Bishof, P.C.

Atty. for: Plaintiff

Address: 101 N. Wacker Dr.

City/State/Zip: Chicago, IL 60606

Telephone: 312-630-2048

JUL 24 2015

ENTERED:

Dated: 7/24/15

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL,

Plaintiff,

v.

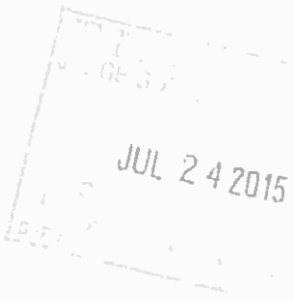
UNION PACIFIC RAILROAD COMPANY, A foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d.b.a. PTI; and ACE AMERICAN INSURANCE CO., a foreign corporation,

Defendants.

Case No. 12 CH 38582

Hon. Sophia H. Hall

5271/0



PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d.b.a. PTI;
Counter-Plaintiff/Defendant,

v.

MARY TERRY CARMICHAEL,
Counter-Defendant/Plaintiff

and

JESSE WHITE, ILLINOIS SECRETARY OF STATE
Counter-Defendant

DECISION

This matter comes on to be heard on Professional Transportation, Inc.'s (PTI) motion to dismiss Count I of plaintiff Mary Terry Carmichael's Complaint. In Count I, Carmichael seeks a judgment against PTI, a contract carrier, for injuries she suffered in a PTI vehicle while it was being used to transport her and other employees of Union Pacific Railroad Company. She sues under 625 ILCS 5/8-101(c) of the Illinois Vehicle Code for PTI's failure to obtain the required $250,000 per passenger of underinsured and uninsured motorist insurance coverage. Section 8-101(c) states:

> (c) This Section also applies to a contract carrier transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers. As part of proof of financial responsibility, a

> contract carrier transporting employees in the course of their employment is required to verify hit and run and uninsured motor vehicle coverage, as provided in Section 143a of the Illinois Insurance Code [215 ILCS 5/143a], and underinsured motor vehicle coverage, as provided in Section 143a-2 of the Illinois Insurance Code [215 ILCS 5/143a-2], in a total amount of not less than $250,000 per passenger. 625 ILCS 5/8-101(c)

This case arises out of the laws addressing the insurance requirements for motor vehicles operated in Illinois. Section 7-601(a) of the Illinois Safety and Family Financial Responsibility Law of the Illinois Vehicle Code (625 ILCS 5/706(a)) requires, with several exceptions not relevant here, all motor vehicles operated or registered in this State to be covered by a liability insurance policy. The Illinois Insurance Code mandates that the liability insurance policy must include uninsured-motorist and underinsured-motorist ("UM/UIM") coverage, and references Section 7-203 of the Illinois Vehicle Code (215 ILCS 5/143a). Section 7-203 sets the amount of coverage as not less than $20,000 per individual and $40,000 for 2 or more persons in any one motor vehicle accident. (625 ILCS 5/7-203).

The purpose behind the mandatory liability insurance and UM/UIM coverage was stated by the Illinois Supreme Court recently in *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48 (2011). The Court explained that:

> The "principal purpose" of the mandatory liability insurance requirement is "to protect the public by securing payment of their damages." To further that end, uninsured-motorist coverage is required "'to place the policyholder in substantially the same position he would occupy, so far as his being injured or killed is concerned, if the wrongful driver had had the minimum liability insurance required by the Financial Responsibility Act. Thus, as we have recently noted, under Illinois law liability, uninsured-motorist, and underinsured-motorist coverage provisions are "inextricably linked." All three serve the same underlying public policy: *ensuring adequate compensation for damages and injuries sustained in motor vehicle accidents*. *Id.* at 57 (emphasis added and internal citations omitted).

The court, therein, examined the legislative history behind UM/UIM coverage and concluded that the purpose of UM/UIM coverage was "to place the insured in the same position he would have occupied if the tortfeasor had carried adequate insurance." *Id.*

The legislature later amended the Illinois Vehicle Code and required that contract carriers carry a higher minimum for UM/UIM coverage. Section 8-101(c) requires a contract carrier transporting employees in the course of their employment, to maintain UM/UIM coverage of $250,000 per passenger rather than the standard $20,000 coverage. The purpose behind the elevated requirement remains the same: to ensure adequate compensation to persons injured by wrongful drivers. Because contract carriers, like PTI, are different from other motorists, as they are contracted to transport employees in the course of their employment, the legislature determined that a higher amount of UM/UIM coverage was necessary to achieve that same

purpose. In an opinion issued January 30, 2015, this Court found that the elevated coverage applicable to contract carriers was constitutional.

PTI moves to dismiss Count I under section 2-619 because Section 8-101(c) does not expressly provide for a private right of action for transported employees to sue a contract carrier for failing to obtain a policy with the $250,000 UM/UIM coverage amount. Carmichael argues that a private right of action should be implied because it is necessary for her to recover adequate compensation as intended by the legislature. PTI argues that the elements for implying such a private right of action are not satisfied.

The elements necessary to support implication of a private right of action are stated in *Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (2004). The four elements, which all must be satisfied, are: (1) that the plaintiff must be a member of the class for whose benefit the statute was enacted; (2) that the injury is one which the statute is designed to prevent; (3) that a private right of action is consistent with the underlying purpose of the statute and; (4) that such an action is necessary to provide to the plaintiff an adequate remedy for violation of the statute.

PTI moves to dismiss Count I and does not challenge elements one and two, but argues that the proposed private right of action does not satisfy the last two of the four elements.

Element 3 – Consistency with the Purposes of the Statute

First, PTI argues that a private right of action is not consistent with the underlying purpose of Section 8-101(c). PTI posits that the purpose of the statute was to satisfy labor unions who advocated for the passage of enhanced coverage requirements for contract carriers. PTI does not cite persuasive support for its view of the purpose of the Section, and, thus, this Court is not persuaded by PTI's argument.

PTI also argues that the purpose of the statute was to allow transported employees a quicker method for obtaining ample relief for injuries sustained when a contract carrier they are in has an accident with an under or uninsured motorist. PTI argues that a private right of action would be inconsistent with such a purpose because it would require this Court to adjudicate all of the issues surrounding the claimed injury which would be complicated, time consuming, and hardly quick. Carmichael responds that adjudicating personal injuries is normal work for the court. This Court, again, is not persuaded by PTI's argument.

Accordingly, this Court finds that PTI's arguments have not persuaded the Court that a private right of action allowing Carmichael to sue PTI for her injuries is not consistent with the underlying purpose of the statute. Such an action would allow employees, transported in contract carriers, to sue the carriers to recover for injuries sustained in accidents with UM/UIM motorists, to recover an amount which should have been provided for in the carrier's insurance policy.

Element 4 - Necessity of Private Right of Action

PTI, next, argues that there is no necessity to imply a private right of action in Section 8-101(c). PTI, first, argues that implying a private right of action is not necessary, because the criminal penalty provided for in 625 ILCS 5/8-116 of the Illinois Vehicle Code offers an adequate remedy for violation of the statute. PTI, second, argues a private right of action is not necessary because it would raise a host of collateral issues and cause uncertainty and delay in Carmichael's efforts to obtain a remedy.

1. Adequacy of Criminal Penalty

PTI argues that the legislature has created a sufficient remedy for effectuating the purposes of the Act by providing, in section 8-116, that violation of Section 8-101 is a Class A misdemeanor. PTI cites two cases where the courts have not implied a private right of action. These cases are *Metzger v. DaRosa*, 209 Ill. 2d 30 (2004), and *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455 (1999).

The court in *Metzger* found no implied private right of action in the Illinois Personnel Code for plaintiff Metzger, an Illinois State Police Officer, who sued for retaliation under a whistleblower protection section. That section specifically prohibited retaliatory action against state employees who reported certain activities. The court found that the purpose of the Personnel Code was to provide a personnel system based on principles of merit and scientific methods, resulting in a competent state government workforce that could not be fired capriciously. Accordingly, the court held that the Code was primarily intended to benefit the public. As a state employee, Metzger was held not to be a member of the class for whose benefit the statute was enacted. The court noted that the Code provided other remedies for Metzger, as an employee, to pursue. *Metzger*, 209 Ill. 2d at 37-38.

The court in *Fisher*, also found no implied private right of action in the Nursing Home Care Act. Plaintiff, a nursing home employee, had sued the nursing home under the Act. The Act contained a whistle blower provision that the nursing home facilities could not retaliate against their residents or employees for filing reports or complaints concerning the treatment of the residents. The court found no implied private right of action for employees under the Act. The court found that the purpose of the Act was to protect the patients. The court held that, viewed as a whole, the law was primarily designed to protect nursing home residents, not employees. *Fisher*, 188 Ill. 2d at 462-64.

Both *Metzger* and *Fisher* involved situations in which the court held that the plaintiff was not a member of the class for whose primary benefit the statute was enacted, and, thus, failed to satisfy the first element necessary to support implication of a private right of action. The instant

case is distinguishable from *Metzger* and *Fisher*. No question here is raised that Carmichael, as an employee transported in a contract carrier involved in an accident subject to UM/UIM coverage, is clearly a member of the class for whose benefit section 8-101(c) was enacted.

PTI cites two additional cases in which the court held that no implied private right of action was necessary to enforce the purpose of those Acts. In those cases, unlike *Metzger* and *Fischer*, the courts found that the plaintiffs came within the purpose of the Act, yet the court did not imply a private right of action.

First, PTI cites *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 391-93 (1999). In that case, plaintiff sued for damages for injuries received from ingesting lead-based paint under the Lead Poisoning Prevention Act. Plaintiff claimed defendant violated the Act because he had not removed the lead paint. The Act contained administrative remedies. The court found it unnecessary to analyze all four of the factors, as an application of the fourth factor was all that was needed to conclude that a private right of action was not necessary for plaintiff to be compensated for his injuries. The court held that plaintiff could recover compensation by suing defendant for negligence, a common law cause of action.

PTI also cites *Tunca v. Painter*, 2012 IL App (1st) 110930, ¶ 19-22 (1st Dist. 2012). *Tunca* involved the Medical Studies Act. The plaintiff, a doctor, brought suit against a fellow doctor whom he claimed made disparaging statements in public about him and his surgical skills which injured his professional reputation. He alleged defendant's conduct violated the confidentiality provision of the Act. The court found that a private right of action was not necessary to provide an adequate remedy for plaintiff to recover for his injuries because there was another remedy, an action for slander, which this plaintiff could and did file against the defendant.

Carmichael cites to two cases where private rights of action were implied by the Illinois Supreme Court, *Rodgers v. St. Mary's Hosp.*, 149 Ill. 2d 302 (1992) and *Corgan v. Muehling*, 143 Ill. 2d 296 (1991). In those cases, the court found that the plaintiffs were intended beneficiaries of the Acts there involved, and that the Acts were intended to prevent their injury.

In *Rodgers*, the plaintiff sued the defendant hospital for damages for loss of his wife's x-ray in violation of the X-Ray Retention Act. Plaintiff claimed that because he did not have those x-rays, he lost his malpractice suit against a doctor for his wife's death. The court found that the X-Ray Retention Act was designed to prevent the loss of evidence that may be essential to a party's pursuit or defense of a medical malpractice claim. Therefore, plaintiff was clearly a member of the class for whose benefit the statute was enacted, and his injury, losing a case because of a lost x-ray, is an injury the statute was designed to prevent. *Rodgers*, 149 Ill. 2d at 308.

The court went on to hold that nothing in the X-Ray Retention Act suggested that the legislature intended to limit a class member to administrative remedies and, further, any administrative remedies contained therein, would not provide compensation which might have been obtained by winning the malpractice case. The court found a private cause of action necessary to provide an adequate remedy for violations of the Act, and this was consistent with the underlying purpose of the Act. *Id.* at 308-09.

Corgan involved a defendant who falsely held himself out as a registered psychologist. Plaintiff sued for negligent infliction of emotional distress. The Supreme Court found that her claim stated a cause of action. Plaintiff's complaint, additionally, included a count for nuisance for violation of Section 26 of the Psychologist Registration Act requiring registration. *Corgan*, 143 Ill. 2d at 312.

The court in *Corgan* first noted that "the Act was enacted to protect the public by prohibiting individuals from practicing or attempting to practice psychology without a valid certificate of registration." *Corgan* at 313. The court held that as a member of the public and a patient of an unregistered psychologist, plaintiff was clearly a member of the class for whose benefit the Act was enacted, and the injury plaintiff suffered at the hands of an unqualified psychologist was exactly the type of injury the statute was designed to prevent. *Id.* at 313.

The court then held that, although the Act did not authorize private individuals to seek civil relief, nothing in the statute suggests that the legislature intended to limit the available remedies to those specifically enumerated in the Act. Thus, although there were other remedies available to plaintiff to recover compensation for defendant's violation of the Act, like that for negligent infliction of emotional distress, the court, nevertheless, found an implied private right of action necessary to enforce the purposes of the Act and to provide to the plaintiff an adequate remedy. *Id.* at 313-315.

In both *Rodgers* and *Corgan*, the court found that the private right of action should be implied in those statutes because all four elements were satisfied supporting an implication of a private right of action. Like Carmichael, both plaintiffs in those cases were suing for compensation for injuries sustained as a result of a defendant's violation of a statute. The courts concluded that to adequately compensate plaintiff for their damages it was necessary to imply a private right of action under the statutes.

In the instant case, implying a private right of action for PTI's violation of section 8-101(c) is warranted. Carmichael is clearly a member of the class for whose benefit section 8-101(c) was enacted. The purpose of section 8-101(c) is to ensure adequate compensation for employees transported in contract carriers to recover for injuries sustained in automobile

accidents with UM/UIM motorists. As an employee transported in a contract carrier vehicle involved in an accident subject to UM/UIM coverage, Carmichael is certainly a member of the class for whose benefit the Act was enacted. Though without section 8-101(c), PTI would have had to have at least $20,000 of UM/UIM insurance, compliance with it would have allowed Carmichael an opportunity to obtain $250,000. Thus, Carmichael is precisely the person to be protected by the $250,000 requirement contained in section 8-101(c).

Accordingly, this Court finds that the criminal penalty imposed on PTI, though encouraging compliance, does not satisfy the purpose of compensating Carmichael up to $250,000 for her medical bills, lost wages, and injuries from an accident in the contract carrier's vehicle subject to UM/UIM coverage.

2. Collateral Issues

PTI also argues that, if the Court were to recognize a private right of action for Carmichael, it might then have to resolve a myriad of issues: (1) the nature and extent of Carmichael's damages; (2) the binding nature of any release between Carmichael and the other driver responsible for the accident, which may have recited that the money was in full payment for her damages; (3) whether Carmichael waived her right of recovery against PTI/ACE by failing to notify them she intended to settle her claim with the other driver; (4) whether she made reasonable efforts to secure a judgment against the other driver; (5) whether Carmichael is obligated to seek recovery of underinsured motorist benefits under her own insurance policy; and (6) whether PTI/ACE would be entitled to set-off payments from Carmichael's employer, in the nature of worker's compensation benefits.

The Court does not find PTI's concerns dispositive of the relevant question here, which is whether a private right of action is necessary to effectuate the purpose section 8-101. The hypothetical issues PTI raises may at some point become necessary for the Court to resolve; however, the fact that PTI might have defenses to Carmichael's claim does not dictate the conclusion that she has no private right of action against PTI.

Conclusion

Based on the foregoing, this Court denies defendant PTI's Motion to Dismiss Count I.

Entered: _____
Judge Sophia H. Hall

JUL 24 2015

Date: 7/24/15

C 1039

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MARY TERRY CARMICHAEL

v.

UNION PACIFIC RR ET. AL.

No. 12 CH 38582

ORDER

THIS MATTER COMING ONTO BE HEARD UPON PTI'S MOTION FOR RECONSIDERATION OF THE COURT'S WRITTEN DECISION OF JULY 24, 2015 WHICH WAS PREVIOUSLY CONTINUED TO THIS DATE, IT IS HEREBY ORDERED THAT THE COURT STANDS ON ITS ORIGINAL DECISION AS INDICATED THIS DATE. HOWEVER THE COURT ALSO FINDS THAT THE INTERESTS OF JUSTICE WILL BE WELL SERVED IF PTI'S ALTERNATIVE MOTION FOR A RULE 308 CERTIFICATION IS GRANTED.

THEREFORE, THIS MATTER IS CONTINUED UNTIL NOVEMBER 30, 2015 AT 9:30 AM SO THAT THE PARTIES MAY PRESENT AN APPROPRIATE ORDER UNDER RULE 308 FOR THIS COURT'S CONSIDERATION.

Atty. No.: #27915

Name: Gregg Beatty, (Judge James)

Atty. for: PTI

Address: 422 N. Northwest Hy.

City/State/Zip: Palatine, IL 60067

Telephone: (847) 292-1200

ENTERED:

JUDGE

Dated: NOV 25 2015

CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL
DEPUTY CLERK

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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NO. 25953

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	No.
UNION PACIFIC RAILROAD COMPANY; a foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corporation d/b/a PTI; and ACE American Insurance Company, a foreign corporation,	)	
	)	
Defendants.	)	

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

Comes now, Plaintiff, **Mary Terry Carmichael**, and for her claims for Declaratory Judgment against the Defendants, **Union Pacific Railroad Company**; a foreign corporation; **Professional Transportation, Inc.**, a foreign corporation d/b/a **PTI**; and **ACE American Insurance Company**, a foreign corporation, states and alleges as follows:

JURISDICTION AND PARTIES

1. That at all times herein material to this lawsuit, Plaintiff, **Mary Terry Carmichael**, was and is a resident of the Calumet City, Cook County, Illinois

2. Defendant, **Union Pacific Railroad Company (hereinafter "UPRR")**, is now, and at all times relevant hereto, a corporation duly organized and existing according to law engaged in business as a common carrier by rail in interstate commerce. The **UPRR's** principal place of business is located in Omaha, Nebraska. **UPRR**, at all relevant times, does business as a common carrier by rail in Cook County, Illinois. The **UPRR**, owns, operates and controls many miles of

track, rail yards and related facilities throughout the County of Cook, State of Illinois.

3. That at all times material herein, Defendant, **Professional Transportation, Inc.**, a foreign corporation d/b/a **PTI (hereinafter "PTI")** was and is a corporation duly organized and existing under the laws of the State of Indiana, was at all times herein mentioned a common carrier for hire to transport passengers and contracted with Defendant **UPRR** to transport its railroad employees within in the State of Illinois including the county where this action is filed.

4. That **Mary Terry Carmichael** is the plaintiff in an action pending in the Law Division of this Circuit Court, Case No.11 L 9679. (Attached as Exhibit E is the complaint). In said action plaintiff is seeking damages from **PTI** and **UPRR** for severe injuries she received in a vehicular accident which occurred on November 13, 2010 in the City of Chicago, County of Cook, Illinois.

5. **ACE American Insurance Company (hereinafter "ACE")** is an insurance corporation with its principal office located in Philadelphia, PA and domiciled in PA. **ACE** is licensed to conduct and transact insurance business in the State of Illinois.

COUNT I
(PTI Declaratory Judgment)
(Re: Duty to Maintain Underinsured Motor Vehicle Coverage)

Plaintiff, **Mary Terry Carmichael**, for her first cause of action against the Defendant, **PTI**, herein states and alleges as follows:

1-5. Plaintiff, **Mary Terry Carmichael**, adopts and realleges paragraphs 1 through 4 as paragraphs 1 through 4 of Count I.

6. Defendant, **PTI** was operating as a contract carrier transporting **UPRR** employees in the course of their employment on a highway in this state in a vehicle designed to carry 15 or

fewer passengers. Plaintiff was a **UPRR** employee and passenger in this vehicle that was involved in the collision.

7. **PTI**, as a contract carrier in Illinois, is required to maintain underinsured motor vehicle coverage in the amount of not less than $250,000.00 per passenger.

8. **PTI**, as a contract carrier in Illinois, has a duty to maintain underinsured motor vehicle coverage at least in the amount of $250,000.00 per passenger as required under 625 ILCS 5/8-101.

9. **PTI**, as a contract carrier in Illinois, has a duty to file with the Secretary of State of Illinois proof of financial responsibility in the amount of at least $250,000.00.

10. **PTI**, as a contract carrier in Illinois, is legally responsible for any provable damages sustained by plaintiff as a result of the motor vehicle accident of November 13, 2010 which exceed the amount of the insurance policy limits of the responsible party but limited to the **PTI**'s underinsured motor vehicle coverage.

11. The above contentions of plaintiff, are, on information and belief, denied by **PTI**.

12. By reason of the foregoing, an actual and justiciable controversy exist between the parties and each of them, which may be determined by a judgment or order of this Court. Pursuant to the terms of 735 ILCS § 5/2-701, this Court has the power to declare and adjudicate the rights and liabilities of the parties hereto under the provisions of 625 ILCS 5/8-101 and to give such other and further relief as may be necessary to enforce the same.

WHEREFORE, Plaintiff, **Mary Terry Carmichael**, prays that this Court enters judgment finding and declaring that the rights of the parties as follows:

A. On November 13, 2010, **PTI** was operating as a contract carrier transporting **UPRR**

employees in the course of their employment on a highway in this state in a vehicle designed to carry 15 or fewer passengers. Plaintiff was a **UPRR** employee and passenger in this vehicle that was involved in a collision on the same date.

B. **PTI**, as a contract carrier in Illinois, is required to maintain underinsured motor vehicle coverage in the amount of not less than $250,000.00 per passenger.

C. **PTI**, as a contract carrier in Illinois, has a duty to maintain underinsured motor vehicle coverage at least in the amount of $250,000.00 per passenger as required under 625 ILCS 5/8-101.

D. **PTI**, as a contract carrier in Illinois, has a duty to file with the Secretary of State of Illinois proof of financial responsibility in the amount of at least $250,000.00.

E. **PTI**, as a contract carrier in Illinois, is legally responsible for any provable damages sustained by plaintiff as a result of the motor vehicle accident of November 13, 2010 which exceed the amount of the insurance policy limits of the responsible or parties but limited to the **PTI**'s underinsured motor vehicle coverage.

COUNT II
(UPRR Declaratory Judgment)
(Re: Off-Track Vehicle Accident Benefits Coverage)

Plaintiff, **Mary Terry Carmichael** , for her second cause of action against the Defendant, **UPRR**, herein states and alleges as follows:

1-5. Plaintiff, **Mary Terry Carmichael**, adopts and realleges paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of Count II.

6. That Defendant **UPRR** pursuant to an agreement it had entered with labor organizations representing some of its employees, including plaintiff, had agreed to pay accident

benefits when these employees were killed or injured while riding in, boarding, or alighting from off-track vehicles authorized by the railroad and are being transported at the railroad's expense. (Attached as Exhibits A, B, C and D are excerpts from these agreements between the railroads (including defendant) and the union representing employees of a certain craft (including plaintiff) which contain the Off-Track Vehicle Accident Benefits provisions).

7. That pursuant to the Off-Track Vehicle Accident Benefits provisions defendant was required to provide plaintiff 80% of her basic full-time weekly compensation commencing within 30 days after the collision.

8. That pursuant to the Off-Track Vehicle Accident Benefits provisions defendant was required to pay and reimburse plaintiff for medical costs incurred for medical care she received because of the injuries she sustained resulting from the collision.

9. The above contentions of plaintiff, are, on information and belief, denied by **UPRR**.

12. By reason of the foregoing, an actual and justiciable controversy exist between the parties and each of them, which may be determined by a judgment or order of this Court. Pursuant to the terms of 735 ILCS § 5/2-701, this Court has the power to declare and adjudicate the rights and responsibilities of the parties hereto under the provisions of Off-Track Vehicle Accident Benefits and to give such other and further relief as may be necessary to enforce the same.

WHEREFORE, Plaintiff, **Mary Terry Carmichael**, prays that this Court enters judgment finding and declaring that the rights of the parties as follows:

A. That at all times material herein, Defendant **UPRR** pursuant to an agreement it had entered with labor organizations representing some of its employees, including plaintiff, had agreed to pay accident benefits to certain employees, including plaintiff,

who were injured while riding in, boarding, or alighting from off-track vehicles authorized by the defendant and were being transported at the defendant's expense.

B. That pursuant to the Off-Track Vehicle Accident Benefits provisions defendant was required to provide plaintiff 80% of her basic full-time weekly compensation commencing within 30 days after the collision.

C. That pursuant to the Off-Track Vehicle Accident Benefits provisions defendant was required to pay and reimburse plaintiff for medical costs incurred for medical care she received because of the injuries she sustained resulting from the collision.

COUNT III
(Declaratory Judgment-ACE)
(Re: Breach of Contract)

Plaintiff, **Mary Terry Carmichael**, for her third cause of action against the Defendant, **ACE**, herein states and alleges as follows:

1-11. Plaintiff, **Mary Terry Carmichael**, adopts and realleges paragraphs 1 through 11 of Count I as paragraphs 1 through 11 of Count III.

12. **ACE** issued a Business Auto insurance policy number ISA H08589410 **(hereinafter " Policy")** to **PTI** as the named insured and covers from April 1, 2010 to April 1, 2011. (Attached as Exhibit F is a copy of the **Policy** and relevant endorsements).

13. Under the schedule of coverages and covered autos the liability coverage limit is $5,000,000.00.

14. The liability coverage section of the **Policy** provides, *inter alia* the following:

Section II - LIABILITY COVERAGE

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

15. The uninsured and underinsured motorist coverages state that the most **ACE** will pay is the statutory limits for said coverage.

16. Endorsement #15 of the **Policy** provides that the limit of the Illinois Uninsured Motorist Coverage is limited to $40,000.00 for each accident. The **Policy** further states that **ACE** will apply the following:

D. Limit of Insurance

We will apply the limit shown in the Declarations to first provide the separate limits required by the Illinois Safety Responsibility Law as follows:

a. $20,000 for "bodily injury" to any one person caused by any one "accident" and

b. $40,000 for "bodily injury" to two or more persons caused by any one "accident".

This provision will not change our total limit of liability.

17. Endorsement #15 of the **Policy** defines "Underinsured motor vehicle" means a land Motor vehicle or trailer:

F. Additional Definitions

3.

a. For which no liability bond or policy at the Time of an "accident" provides at least the Amounts required by the applicable law

Where a covered "auto" is principally garaged; or

b. For which an insuring or bonding company denies coverage or is or becomes insolvent: or

c. That is a hit-and-run vehicle and neither the driver nor owner can be identified. The vehicle must hit, or cause an object to hit, an "insured", a covered "auto" or a vehicle an "insured" is "occupying". If there is no physical contact with the hit-and-run vehicle, the facts of the "accident" must be proved.

18. Based on the definitions provided in the **Policy**, the land motor vehicle that was involved in the accident of November 13, 2010 with the **PTI** "auto", in which plaintiff was a passenger, was not an uninsured motor vehicle.

19. Endorsement #23 of the **Policy** provides the following:

A. Changes in Liability Coverage

2. Our **Limit of Insurance** applies except that We will apply the limit shown in the Declarations to firsts provide the separate limits required by the Illinois Safety Responsibility Law As follows:

a. $20,000 for "bodily injury" to any one person caused by any one "accident",

b. $40,000 for "bodily injury" to two or more persons caused by any one "accident", And

c. $15,000 for "property damage" caused by any one "accident".

This provision will not change our total **Limit Of Insurance.**

20. 625 ILCS 5/8-101 is an Illinois statute that pertains to the amount and the proof of financial responsibility of persons who operate motor vehicles in transportation of passengers for hire.

21. 625 ILCS 5/7-203 is the portion of the Illinois Safety and Family Financial Responsibility Law that pertains to the amount and the proof of financial responsibility of persons who operate motor vehicles that are not used in the transportation of passengers for hire.

22. The Illinois Safety Responsibility Law referred to Endorsement #23 is "Part 1070 Illinois Safety Responsibility Law, Title 92, Transportation, Administrative Code".

23. "Part 1080, Motor Vehicles Used For Transportation of Passengers, Title 92, Transportation, Administrative Code" pertains only to motor vehicles used for transporting passengers.

24. Plaintiff contends that the limits of coverage expressed in the Endorsements #15 and #23 of the **Policy** do not apply to the amount and the proof of financial responsibility required of persons who operate motor vehicles in transportation of passengers for hire.

25. Plaintiff contends that the limit of insurance that applies to the injuries and damages she sustained in the accident that occurred on November 13, 2010 involving the **PTI** "auto", in which plaintiff was a passenger is $5,000,000.

26. The above contentions of plaintiff are, on information and belief, denied by ACE.

27. By reason of the foregoing, an actual and justiciable controversy exists between the parties and each of them, which may be determined by a judgment or order of this court. Pursuant to the terms of section 5/2-701 of the Illinois Code of Civil Procedure (735 ILCS § 5/2-701), this Court has the power to declare and adjucicate the rights and liabilities of the parties hereto under the

terms and provisions of the policy of insurance, **Policy**, referred to herein and to adjudicate the final rights of all parties and to give such other and further relief as may be necessary to enforce the same.

WHEREFORE, Plaintiff, **Mary Terry Carmichael**, prays that this Court enters judgment finding and declaring that the rights of the parties as follows:

A. On November 13, 2010, **PTI** was operating as a contract carrier transporting **UPRR** employees in the course of their employment on a highway in this state in a vehicle designed to carry 15 or fewer passengers. Plaintiff was a **UPRR** employee and passenger in this vehicle that was involved in a collision on the same date.

B. **PTI**, as a contract carrier in Illinois, is required to maintain underinsured motor vehicle coverage in the amount of not less than $250,000.00 per passenger.

C. **PTI**, as a contract carrier in Illinois, has a duty to maintain underinsured motor vehicle coverage at least in the amount of $250,000.00 per passenger as required under 625 ILCS 5/8-101.

D. **PTI**, as a contract carrier in Illinois, has a duty to file with the Secretary of State of Illinois proof of financial responsibility in the amount of at least $250,000.00.

E. **PTI**, as a contract carrier in Illinois, is legally responsible for any provable damages sustained by plaintiff as a result of the motor vehicle accident of November 13, 2010 which exceed the amount of the insurance policy limits of the responsible or parties but limited to the **PTI**'s underinsured motor vehicle coverage.

F. **ACE** issued a Business Auto insurance policy number ISA H08589410 **(hereinafter " Policy")** to **PTI** as the named insured which covered the time period from April 1, 2010 to April 1, 2011.

G. Under the schedule of coverages and covered autos, the liability coverage limit is $5,000,000.00.

H. The limits of coverage expressed in the Endorsements #15 and #23 of the **Policy** do not apply to the amount and the proof of financial responsibility required of persons who operate motor vehicles in transportation of passengers for hire.

I. The limits of coverage expressed in the Endorsements #15 and #23 of the **Policy** do not apply to the amount and the proof of financial responsibility required of **PTI** for any injuries and/or damages sustained by any of its passengers as a result of the accident that occurred on November 13, 2010.

J. The limit of insurance that applies to the injuries and damages plaintiff sustained as a passenger in the accident that occurred on November 13, 2010 involving the **PTI** "auto",is $5,000,000.

LAW OFFICE OF JOHN BISHOF, P.C.

By: _____
John S. Bishof, Jr., IL ATTY. #25953
77 West Washington St., Suite 1910
Chicago, IL 60602
Telephone: 312-630-2048
Facsimile: 312-630-2085

274/13-2968 Atty. No. 27915

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL,

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, A foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI; and ACE AMERICAN INSURANCE CO., a foreign corporation,

Defendants.

NO: 12 CH 38582
Calendar 14

PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI;

Counter-Plaintiff/Defendant,

vs.

MARY TERRY CARMICHAEL,

Counter-Defendant/Plaintiff,

and

STATE OF ILLINOIS,

Counter-Defendant.

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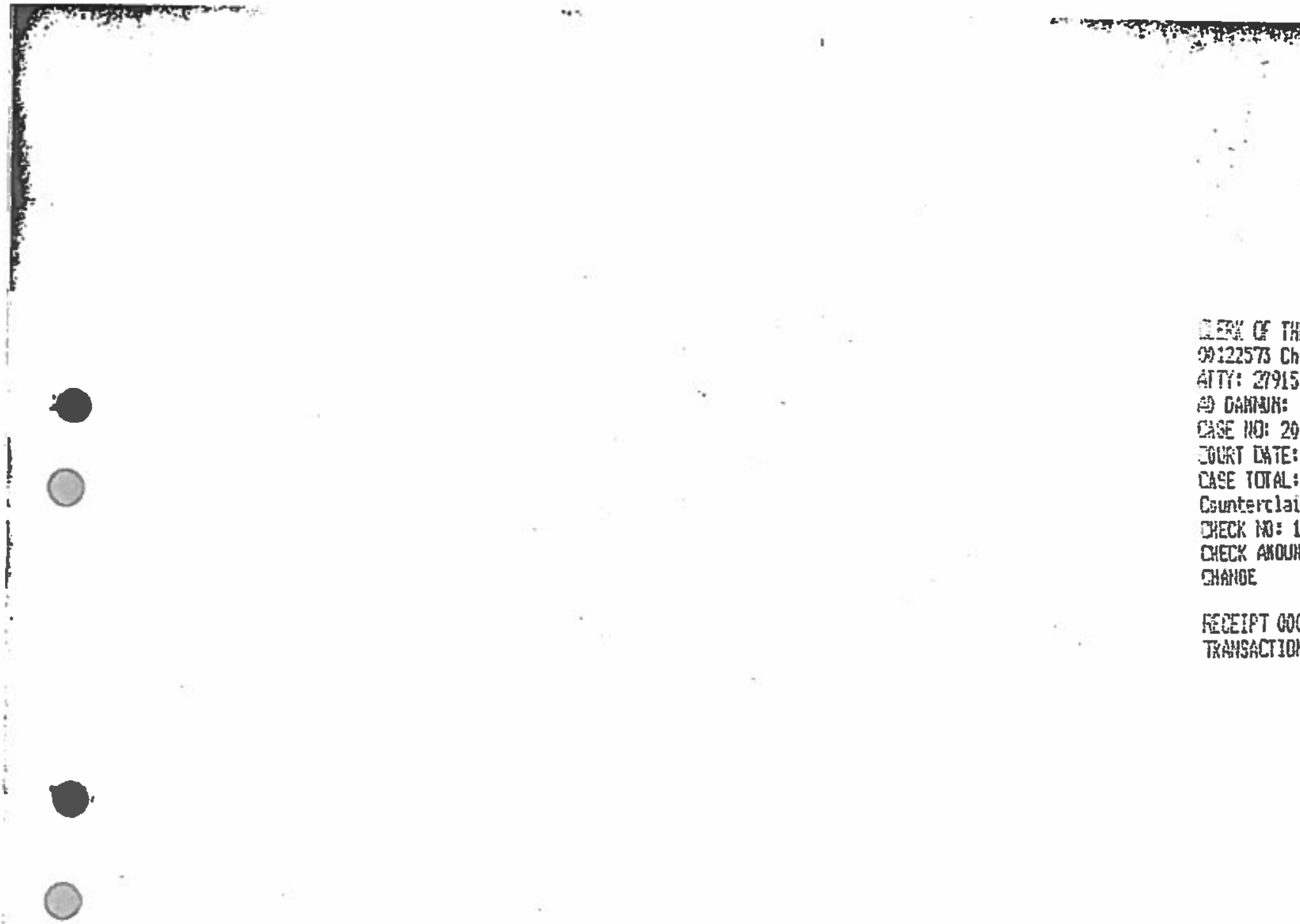
DEFENDANT PROFESSIONAL TRANSPORTATION, INC.'S AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTER-CLAIM

NOW COMES Defendant/Counter-Plaintiff, PROFESSIONAL TRANSPORTATION, INC. ("PTI"), by and through its attorneys, GEORGE H. BRANT



of JUDGE, JAMES & KUJAWA, LLC and HUGH C. GRIFFIN of HALL, PRANGLE & SCHOONVELD, LLC; and, having first obtained leave of Court, files its Amended Answer, Affirmative Defenses and Counterclaim, in response to Plaintiff's Complaint for a Declaratory Judgment:

ANSWER

JURISDICTION AND PARTIES

1. That at all times herein material to this lawsuit, Plaintiff, Mary Terry Carmichael, was and is a resident of the Calumet City, Cook County, Illinois.

ANSWER: **Admitted.**

2. Defendant, Union Pacific Railroad Company (hereinafter "UPRR"), is now, and at all times relevant hereto, a corporation duly organized and existing according to law engaged in business as a common carrier by rail in interstate commerce. The UPRR's principal place of business is located in Omaha, Nebraska. UPRR, at all relevant times, does business as a common carrier by rail in Cook County, Illinois. The UPRR owns, operates and controls many miles of track, rail yards and related facilities throughout the County of Cook, State of Illinois.

ANSWER: **Defendant, PTI, makes no answer to Paragraph 2 of Plaintiff's Complaint because the allegations therein do not appear to be addressed against this Defendant.**

3. That at all times material herein, Defendant, Professional Transportation, Inc., a foreign corporation d/b/a PTI, (hereinafter "PTI") was and is a corporation duly organized and existing under the laws of the State of Indiana, was at all times herein mentioned a common carrier for hire to transport passengers and contracted with Defendant UPRR to transport its railroad employees within the State of Illinois, including the county where this action is filed.

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ANSWER: **Admitted.**

4. That Mary Terry Carmichael is the plaintiff in an action pending in the Law Division of this Circuit Court, Case No. 11 L 9679. (Attached as Exhibit E to the complaint). In said action plaintiff is seeking damages from PTI and UPRR for severe

injuries she received in a vehicular accident which occurred on November 13, 2010 in the City of Chicago, County of Cook, Illinois.

ANSWER: Defendant, PTI, admits that Plaintiff had once filed suit against PTI, UPRR, as well as other defendants in the Law Division of the Circuit Court of Cook County, Case No. 11 L 9679, alleging that she sustained injuries in a vehicular accident on November 13, 2010 in the City of Chicago, but PTI denies that such action is "pending," and asserts that such action at law was previously dismissed, with prejudice, as to PTI on the ground that the conduct of PTI did not contribute, in whole or in part, to cause the accident at issue.

5. ACE American Insurance Company (hereinafter "ACE") is an insurance corporation with its principal office located in Philadelphia, PA and domiciled in PA. ACE is licensed to conduct and transact insurance business in the State of Illinois.

ANSWER: Defendant, PTI, makes no answer to Paragraph 5 of Plaintiff's Complaint because it does not appear to be addressed against PTI.

COUNT I
(PTI Declaratory Judgment)
(Re: Duty to Maintain Underinsured Motor Vehicle Coverage)

1-5. Plaintiff, Mary Terry Carmichael, adopts and realleges paragraphs 1 through 4 as paragraphs 1 through 4 of Count I.

ANSWER: Defendant, PTI, adopts and realleges its responses to Paragraphs 1-4 of Plaintiff's Complaint as its responses to Paragraphs 1-4 of Count I.

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6. Defendant, PTI was operating as a contract carrier transporting UPRR employees in the course of their employment on a highway in this state in a vehicle designed to carry 15 or fewer passengers. Plaintiff was a UPRR employee and passenger in this vehicle that was involved in the collision.

ANSWER: Defendant, PTI, admits that plaintiff was both an employee of Union Pacific Railroad Company, and a passenger in one of PTI's vehicles on

November 13, 2010, when PTI's vehicle was struck by another vehicle, and that PTI's vehicle was designed to carry 15 or fewer passengers, and that at the time of the occurrence alleged, PTI had a contract with UPRR to transport the railroad's employees by motor vehicle.

7. PTI, as a contract carrier in Illinois, is required to maintain underinsured motor vehicle coverage in the amount of not less than $250,000.00 per passenger.

ANSWER: Defendant, PTI, denies the allegations in Paragraph 7 of Count I of Plaintiff's Complaint because there is no requirement that all contract carriers in Illinois carry underinsured motor vehicle coverage in an amount not less than $250,000 per passenger.

8. PTI, as a contract carrier in Illinois, has a duty to maintain underinsured motor vehicle coverage at least in the amount of $250,000.00 per passenger as required under 625 ILCS 5/8-101.

ANSWER: Defendant, PTI, denies the allegations of Paragraph 8 of Count I for the reason set forth in its answer to Paragraph 7 of Count I which is adopted and realleged by this reference. PTI admits that 625 ILCS 5/8-101(c) does purport to impose a unique obligation to purchase $250,000 of underinsured motorist coverage per passenger on a certain limited group of contract carriers, as follows:

> (c) This Section also applies to a contract carrier transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers. As part of proof of financial responsibility, a contract carrier transporting employees in the course of their employment is required to verify hit and run and uninsured motor vehicle coverage, as provided in Section 143a of the Illinois Insurance Code, and underinsured motor vehicle coverage, as provided in Section 143a-2 of the Illinois Insurance Code, in a total amount of not less than $250,000 per passenger.

9. PTI, as a contract carrier in Illinois, has a duty to file with the Secretary of State of Illinois proof of financial responsibility in the amount of at least $250,000.00.

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ANSWER: **To the extent that Plaintiff's allegation refers to underinsured motorist insurance coverage, Defendant, PTI, adopts and realleges its answer to Paragraph 8 of Count I as its answer to Paragraph 9 of Count I of Plaintiff's Complaint.**

10. PTI, as a contract carrier in Illinois, is legally responsible for any provable damages sustained by plaintiff as a result of the motor vehicle accident of November 13, 2010 which exceed the amount of the insurance policy limits of the responsible party but limited to PTI's underinsured motor vehicle coverage.

ANSWER: **Defendant, PTI, denies the allegations of Paragraph 10 of Count I.**

11. The above contentions of plaintiff are, on information and belief, denied by PTI.

ANSWER: **Defendant, PTI, adopts and realleges its answer to Paragraphs 1-10 of Count I of Plaintiff's Complaint as its answer to Paragraph 11 of Count I of Plaintiff's Complaint.**

12. By reason of the foregoing, an actual and justiciable controversy exists between the parties and each of them, which may be determined by a judgment or order of this Court. Pursuant to the terms of 735 ILCS § 5/2-701, this Court has the power to declare and adjudicate the rights and liabilities of the parties under the provisions of 625 ILCS 5/8-101 and to give such other and further relief as may be necessary to enforce the same.

ANSWER: **Defendant, PTI, admits the allegations of Paragraph 12 of Count I of Plaintiff's Complaint.**

WHEREFORE, Defendant, PROFESSIONAL TRANSPORTATION, INC., asks that Count I of Plaintiff's Complaint for declaratory relief be denied and that the Court provide such further relief to Defendant, PROFESSIONAL TRANSPORTATION, INC., as the Court may deem to be appropriate, to include, but not be limited to, the recovery of its costs and expenses in defending this matter.

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AFFIRMATIVE DEFENSES

NOW COMES Defendant, PROFESSIONAL TRANSPORTATION, INC., and in further response to Plaintiff's Complaint for a declaratory judgment against PTI, raises the following Affirmative Defenses:

I.

625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, purporting to burden PTI and/or other similarly situated contract carriers whose vehicles are designed to carry 15 or fewer passengers with the unique responsibility of obtaining underinsured motorist coverage in an amount "not less than $250,000 per passenger," for the exclusive benefit of a limited class of passengers, i.e., "employees in the course of employment," constitutes prohibited "special legislation" in violation of the Illinois Constitution, Article 4, Section 3.

II.

625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, purporting to burden PTI and/or other similarly situated contract carriers with the unique obligation to obtain underinsured motorist insurance coverage for their passengers in no less an amount than $250,000 per passenger because their vehicles are designed to carry 15 or fewer passengers violates the constitutional guarantees of equal protection under the law contained in the Fourteenth Amendment to the United States Constitution and Section 2 of Article 1 of the Illinois Constitution, because no other motor vehicle passenger carriers in Illinois are burdened with the unique requirement of maintaining such insurance, and there is no reasonable basis to impose such a requirement on PTI and others who are similarly situated.

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III.

The burdens allegedly imposed upon PTI by 625 ILCS 5/8-101(c), and the related penal statute, 625 ILCS 5/8-116, are unconstitutionally vague and uncertain in violation of the guarantees of due process of law contained in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 2 of the Illinois Constitution, in that the underinsured motorist insurance requirements contained therein make ambiguous references to vehicles designed to carry "fifteen or fewer" passengers and impose ambiguous levels of insurance in a "total amount" of "not less than $250,000 per passenger."

IV.

The ambiguous and onerous obligations allegedly imposed upon PTI by 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, constitute an undue and unreasonable burden on interstate commerce in violation of the Commerce Clause of the United States Constitution, Article 1, Section 8, Clause 3, in that contract motor carriers, such as PTI, which transport passengers in interstate commerce, could not know how much underinsured motorist insurance to obtain in advance of operating, unless one refused to operate any fleet vehicle until each vehicle was fully occupied, and this and other burdens imposed by the statute would unreasonably burden PTI and other similarly situated contract carriers.

V.

The Illinois Vehicle Code, of which 625 ILCS 5/8-101(c) is a part, does not provide any civil remedy for its alleged breach, such as that asserted by Plaintiff. Instead it provides at 625 ILCS 5/8-116 that any person who fails to comply with its provisions is

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guilty of a Class A misdemeanor. Thus, 625 ILCS 5/8-101(c) does not give plaintiff a basis for her private civil cause of action seeking money damages.

WHEREFORE, Defendant, PROFESSIONAL TRANSPORTATION, INC. prays that 625 ILCS 5/8-101(c) which is cited by Plaintiff, MARY TERRY CARMICHAEL, as the basis for her declaratory judgment action against PROFESSIONAL TRANSPORTATION, INC., be declared unconstitutional, and null and void, and/or that the Court declare that 625 ILCS 5/8-101(c) does not provide Plaintiff a private civil remedy, so that PROFESSSIONAL TRANSPORTATION, INC. may go hence without day.

COUNT II
(UPRR Declaratory Judgment)
(Re: Off-Track Vehicle Accident Benefits Coverage)

Defendant, PROFESSIONAL TRANSPORTATION, INC., makes no answer to Count II of Plaintiff's Complaint, because it does not appear to be addressed against PTI.

WHEREFORE, Defendant, PROFESSIONAL TRANSPORTATION, INC., asks that Count II of Plaintiff's Complaint for declaratory relief be dismissed as to PTI, and that PTI be granted such further relief as the Court may deem appropriate.

COUNT III
(Declaratory Judgment – ACE)
(Re: Breach of Contract)

Defendant, PROFESSIONAL TRANSPORTATION, INC., makes no answer to Count III of Plaintiff's Complaint, because it does not appear to be addressed against PTI.

WHEREFORE, Defendant, PROFESSIONAL TRANSPORTATION, INC., asks that Count III of Plaintiff's Complaint for declaratory relief be dismissed as to PTI, and that PTI be granted such further relief as the Court may deem appropriate.

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COUNTERCLAIM

PROFESSIONAL TRANSPORTATION, INC.'S COUNTERCLAIM AGAINST MARY TERRY CARMICHAEL AND THE STATE OF ILLINOIS THROUGH CERTAIN STATE OFFICIALS

NOW COMES Defendant/Counter-Plaintiff, PROFESSIONAL TRANSPORTATION, INC. ("PTI"), by its attorneys, GEORGE H. BRANT of JUDGE, JAMES & KUJAWA, LLC and HUGH C. GRIFFIN of HALL PRANGLE & SCHOONVELD, LLC, pursuant to 735 ILCS 5/2-701 and 735 ILCS 5/2-614 and, for its counterclaim against MARY TERRY CARMICHAEL, and THE STATE OF ILLINOIS by and through the Illinois Attorney General and the Illinois Secretary of State, states as follows:

1. MARY TERRY CARMICHAEL has filed a declaratory judgment action against UNION PACIFIC RAILROAD COMPANY, PTI and ACE AMERICAN INSURANCE COMPANY, by which she seeks, among other things, a declaration that PTI should be obliged to compensate her, in whole or in part, for the alleged personal injuries she sustained in a motor vehicle collision which occurred on November 13, 2010 in the City of Chicago, Cook County, Illinois. (A copy of said filing is attached hereto as EXHIBIT A.)

2. The declaratory judgment action filed by MARY TERRY CARMICHAEL alleges that the injuries for which she seeks recovery were sustained in the aforesaid collision at the time that she was a passenger in a motor vehicle owned and operated by PTI.

3. MARY TERRY CARMICHAEL also alleges that at the time of the aforesaid collision, she was an employee of UNION PACIFIC RAILROAD COMPANY;

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and that she was being transported between job sites by PTI, pursuant to a contract entered into between UNION PACIFIC RAILROAD COMPANY and PTI.

4. Previously, in an action filed against PTI in the Law Division of the Circuit Court of Cook County, Case No. 11 L 9679, counsel for MARY TERRY CARMICHAEL agreed to an order dismissing her complaint with prejudice against PTI because the conduct of PTI did not contribute, in whole or in part, to cause the accident at issue. (A copy of said Order is attached hereto as **EXHIBIT** B.)

5. Notwithstanding said dismissal order, MARY TERRY CARMICHAEL herein asserts that PTI as contract carrier whose vehicle was designed to carry 15 or fewer passengers is liable to Plaintiff pursuant to 625 ILCS 5/8-101(c) because PTI was obligated to maintain underinsured motorist insurance coverage in the amount of $250,000 per person, which might have supplemented any recovery MARY TERRY CARMICHAEL allegedly obtained from the party responsible for the vehicular collision of November 13, 2010.

6. Defendant/Counter-Plaintiff, PTI has herewith filed its Amended Answer and its Affirmative Defenses in this action admitting that it did transport UNION PACIFIC RAILROAD COMPANY employees by motor vehicle pursuant to an agreement reached with UNION PACIFIC; and that, in so doing, one of its vehicles, designed to carry 15 or fewer passengers, was carrying MARY TERRY CARMICHAEL when it was struck by another vehicle.

7. On information and belief, the motorist whose vehicle struck the PRI vehicle carrying MARY TERRY CARMICHAEL maintained bodily injury liability insurance policy limits of $20,000 per person.

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8. PTI's Amended Answer raises affirmative defenses I IV, directed against 625 ILCS 5/8-101(c) which assert that said statute is unconstitutional, and the claims of unconstitutionality are hereby restated as follows:

a) 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116 purporting to burden PTI and other similarly situated contract carriers whose vehicles are designed to carry 15 or fewer passengers with the unique responsibility of obtaining underinsured motorist coverage in an amount "not less than $250,000 per passenger," for the exclusive benefit of a limited class of passengers, i.e., "employees in the course of employment," constitutes prohibited "special legislation" in violation of the Illinois Constitution, Article 4, Section 3.

b) 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, purporting to burden PTI and other similarly situated contract carriers with the unique obligation to obtain underinsured motor vehicle insurance coverage for their passengers in no less an amount than $250,000 per passenger because their vehicles are designed to carry 15 or fewer passengers violates the constitutional guarantees of equal protection under the law contained in the Fourteenth Amendment to the United States Constitution and Section 2 of Article 1 of the Illinois Constitution, because no other motor vehicle passenger carriers in Illinois are burdened with the unique requirement of maintaining such insurance, and there is no reasonable basis to impose such a requirement on PTI and others who are similarly situated.

c) The burdens allegedly imposed upon PTI by 625 ILCS 5/8-101(c), and the related penal statute, 625 ILCS 5/8-116, are unconstitutionally vague and uncertain in violation of the guarantees of due process of law contained in the Fifth and Fourteenth

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Amendments to the United States Constitution and Article I, Section 2 of the Illinois Constitution, in that the underinsured motorist insurance requirements contained therein make ambiguous references to vehicles designed to carry "fifteen or fewer" passengers and impose ambiguous levels of insurance in a "total amount" of "not less than $250,000 per passenger."

d) The ambiguous and onerous obligations allegedly imposed upon PTI by 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, constitute an undue and unreasonable burden on interstate commerce in violation of the Commerce Clause of the United States Constitution, Article 1, Section 8, Clause 3, in that contract motor carriers, such as PTI, which transport passengers in interstate commerce, could not know how much underinsured motorist insurance to obtain in advance of operating, unless one refused to operate any fleet vehicle until each vehicle was fully occupied, and this and other burdens imposed by the statute would unreasonably burden PTI.

9. The State of Illinois, through the Attorney General and the Secretary of State, is an appropriate party in this case because they are charged with the enforcement of the Illinois Vehicle Code, especially 625 ILCS 5/8-101(c), , which is relied upon by MARY TERRY CARMICHAEL, and which PTI alleges is unconstitutional.

10. No other motor carriers in Illinois, other than those who contract to transport employees in the course of their employment in vehicles designed to carry 15 or fewer passengers, are required to carry underinsured motorist insurance coverage in the amount of $250,000 per passenger.

11. There is no reasonable basis for concluding that those motor carriers who transport employees in the course of their employment in motor vehicles designed to

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carry 15 passengers or less, are more likely to have their vehicles struck by underinsured motorists, or that motor carriers, such as PTI, should be singled out by law and burdened with the unique obligation to secure $250,000 in underinsured motorist coverage, per passenger, to guard against such an eventuality.

12. According to the terms of 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, PTI, and others similarly situated, could avoid the penal terms of the statute by owning and operating motor vehicles designed to carry 16 or fewer passengers, rather than 15 or fewer passengers, and there is no reasonable basis for making such a distinction in the penal reach of said statute.

13. House Transcript, 2005 Regular Session No. 28, which pertains to the passage of 625 ILCS 5/8-101(c), documents that the underinsured motorist insurance provision at issue was enacted at the behest of railroad labor unions which sought to burden contract motor carriers who transported their union membership with the unique obligation to carry underinsured motorist insurance coverage in no less an amount than $250,000 per passenger. (See, **EXHIBIT C** attached hereto).

14. Plaintiff, MARY TERRY CARMICHAEL, is a railroad union member who has brought her declaratory action against PTI, in an attempt to benefit from the special legislation that was enacted at her union's behest, allegedly burdening PTI, and others similarly situated, with the obligation to obtain underinsured motorist insurance coverage in an amount no less than $250,000 per passenger.

15. That by virtue of the foregoing, there is a case or controversy existing between PTI, MARY TERRY CARMICHAEL, and THE STATE OF ILLINOIS by and through the Illinois Attorney General and the Illinois Secretary of State; and, according to

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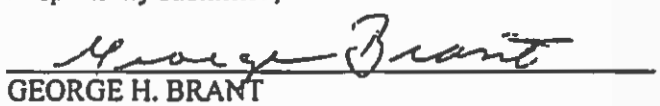
the terms and provisions of 735 ILCS 5/2-701, this Court is vested with the power to declare the rights and liabilities of the parties hereto, as regards the constitutionality of 625 ILCS 5/8-101(c).

WHEREFORE, Defendant/Counter-Plaintiff, PROFESSIONAL TRANSPORTATION, INC. prays that 625 ILCS 5/8-101(c), which is cited as the basis for MARY TERRY CARMICHAEL'S cause of action against PROFESSIONAL TRANSPORTATION, INC., be declared unconstitutional, null and void; that the penal provision in 625 ILCS 5/8-116 be declared unconstitutional as applied to the provisions of 625 ILCS 5/8-101(c); that MARY TERRY CARMICHAEL's declaratory judgment action be dismissed with prejudice as to PTI; and that PTI be awarded such further relief as seems just and proper.

Respectfully submitted,



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274/13-2968 Atty. No. 27915

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL,
Plaintiff,
vs.

UNION PACIFIC RAILROAD COMPANY, A foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI; and ACE AMERICAN INSURANCE CO., a foreign corporation,
Defendants.

No: 12 CH 38582
Calendar 14

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.

DEFENDANT PROFESSIONAL TRANSPORTATION, INC.'S FOURTH AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTER-CLAIM

NOW COMES Defendant/Counter-Plaintiff, PROFESSIONAL TRANSPORTATION, INC. ("PTI"), by and through its attorneys, GEORGE H. BRANT of JUDGE, JAMES & KUJAWA, LLC and HUGH C. GRIFFIN of HALL, PRANGLE & SCHOONVELD, LLC; and, having first obtained leave of Court, files its Fourth Amended Answer, Affirmative Defenses and Counterclaim, in response to Plaintiff's Complaint for a Declaratory Judgment:

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ANSWER

JURISDICTION AND PARTIES

1. That at all times herein material to this lawsuit, Plaintiff, Mary Terry Carmichael, was and is a resident of the Calumet City, Cook County, Illinois.

ANSWER: Admitted.

2. Defendant, Union Pacific Railroad Company (hereinafter "UPRR"), is now, and at all times relevant hereto, a corporation duly organized and existing according to law engaged in business as a common carrier by rail in interstate commerce. The UPRR's principal place of business is located in Omaha, Nebraska. UPRR, at all relevant times, does business as a common carrier by rail in Cook County, Illinois. The UPRR owns, operates and controls many miles of track, rail yards and related facilities throughout the County of Cook, State of Illinois.

ANSWER: Defendant, PTI, makes no answer to Paragraph 2 of Plaintiff's Complaint because the allegations therein do not appear to be addressed against this Defendant.

3. That at all times material herein, Defendant, Professional Transportation, Inc., a foreign corporation d/b/a PTI, (hereinafter "PTI") was and is a corporation duly organized and existing under the laws of the State of Indiana, was at all times herein mentioned a common carrier for hire to transport passengers and contracted with Defendant UPRR to transport its railroad employees within the State of Illinois, including the county where this action is filed.

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ANSWER: Admitted.

4. That Mary Terry Carmichael is the plaintiff in an action pending in the Law Division of this Circuit Court, Case No. 11 L 9679. (Attached as Exhibit E to the

complaint). In said action plaintiff is seeking damages from PTI and UPRR for severe injuries she received in a vehicular accident which occurred on November 13, 2010 in the City of Chicago, County of Cook, Illinois.

ANSWER: Defendant, PTI, admits that Plaintiff had once filed suit against PTI, UPRR, as well as other defendants in the Law Division of the Circuit Court of Cook County, Case No. 11 L 9679, alleging that she sustained injuries in a vehicular accident on November 13, 2010 in the City of Chicago, but PTI denies that such action is "pending," and asserts that such action at law was previously dismissed, with prejudice, as to PTI on the ground that the conduct of PTI did not contribute, in whole or in part, to cause the accident at issue.

5. ACE American Insurance Company (hereinafter "ACE") is an insurance corporation with its principal office located in Philadelphia, PA and domiciled in PA. ACE is licensed to conduct and transact insurance business in the State of Illinois.

ANSWER: Defendant, PTI, makes no answer to Paragraph 5 of Plaintiff's Complaint because it does not appear to be addressed against PTI.

COUNT I
(PTI Declaratory Judgment)
(Re: Duty to Maintain Underinsured Motor Vehicle Coverage)

1-5. Plaintiff, Mary Terry Carmichael, adopts and realleges paragraphs 1 through 4 as paragraphs 1 through 4 of Count I.

ANSWER: Defendant, PTI, adopts and realleges its responses to Paragraphs 1-4 of Plaintiff's Complaint as its responses to Paragraphs 1-4 of Count I.

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6. Defendant, PTI was operating as a contract carrier transporting UPRR employees in the course of their employment on a highway in this state in a vehicle designed to carry 15 or fewer passengers. Plaintiff was a UPRR employee and passenger in this vehicle that was involved in the collision.

ANSWER: Defendant, PTI, admits that Plaintiff was both an employee of Union Pacific Railroad Company, and a passenger in one of PTI's vehicles on

November 13, 2010, when PTI's vehicle was struck by another vehicle. PTI also admits that its vehicle was designed to carry a driver and six passengers, and that at the time of the occurrence alleged, PTI had a contract with UPRR to transport the railroad's employees by motor vehicle.

7. PTI, as a contract carrier in Illinois, is required to maintain underinsured motor vehicle coverage in the amount of not less than $250,000.00 per passenger.

ANSWER: Defendant, PTI, denies the allegations in Paragraph 7 of Count I of Plaintiff's Complaint because there is no requirement that all contract carriers in Illinois carry underinsured motor vehicle coverage in an amount not less than $250,000 per passenger.

8. PTI, as a contract carrier in Illinois, has a duty to maintain underinsured motor vehicle coverage at least in the amount of $250,000.00 per passenger as required under 625 ILCS 5/8-101.

ANSWER: Defendant, PTI, denies the allegations of Paragraph 8 of Count I for the reason set forth in its answer to Paragraph 7 of Count I which is adopted and realleged by this reference. PTI admits that 625 ILCS 5/8-101(c) does purport to impose a unique obligation to purchase $250,000 of underinsured motorist coverage per passenger on a certain limited group of contract carriers, as follows:

> **(c) This Section also applies to a contract carrier transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers. As part of proof of financial responsibility, a contract carrier transporting employees in the course of their employment is required to verify hit and run and uninsured motor vehicle coverage, as provided in Section 143a of the Illinois Insurance Code, and underinsured motor vehicle coverage, as provided in Section 143a-2 of the Illinois Insurance Code, in a total amount of not less than $250,000 per passenger.**

9. PTI, as a contract carrier in Illinois, has a duty to file with the Secretary of State of Illinois proof of financial responsibility in the amount of at least $250,000.00.

ANSWER: To the extent that Plaintiff's allegation refers to underinsured motorist insurance coverage, Defendant, PTI, adopts and realleges its answer to Paragraph 8 of Count I as its answer to Paragraph 9 of Count I of Plaintiff's Complaint.

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10. PTI, as a contract carrier in Illinois, is legally responsible for any provable damages sustained by plaintiff as a result of the motor vehicle accident of November 13, 2010 which exceed the amount of the insurance policy limits of the responsible party but limited to PTI's underinsured motor vehicle coverage.

ANSWER: Defendant, PTI, denies the allegations of Paragraph 10 of Count I.

11. The above contentions of plaintiff are, on information and belief, denied by PTI.

ANSWER: Defendant, PTI, adopts and realleges its answer to Paragraphs 1-10 of Count I of Plaintiff's Complaint as its answer to Paragraph 11 of Count I of Plaintiff's Complaint.

12. By reason of the foregoing, an actual and justiciable controversy exists between the parties and each of them, which may be determined by a judgment or order of this Court. Pursuant to the terms of 735 ILCS § 5/2-701, this Court has the power to declare and adjudicate the rights and liabilities of the parties under the provisions of 625 ILCS 5/8-101 and to give such other and further relief as may be necessary to enforce the same.

ANSWER: Defendant, PTI, admits the allegations of Paragraph 12 of Count I of Plaintiff's Complaint.

WHEREFORE, Defendant, PROFESSIONAL TRANSPORTATION, INC., asks that Count I of Plaintiff's Complaint for declaratory relief be denied and that the Court provide such further relief to Defendant, PROFESSIONAL TRANSPORTATION, INC., as the Court may deem to be appropriate, to include, but not be limited to, the recovery of its costs and expenses in defending this matter.

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AFFIRMATIVE DEFENSES

NOW COMES Defendant, PROFESSIONAL TRANSPORTATION, INC., and in further response to Plaintiff's Complaint for a declaratory judgment against PTI, raises the following Affirmative Defenses:

I.

625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, purporting to burden PTI and/or other similarly situated contract carriers whose vehicles are designed to carry 15 or fewer passengers with the unique responsibility of obtaining underinsured motorist coverage in an amount "not less than $250,000 per passenger," for the exclusive benefit of a limited class of passengers, i.e., "employees in the course of employment," constitutes prohibited "special legislation" in violation of the Illinois Constitution, Article 4, Section 3.

II.

625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, purporting to burden PTI and/or other similarly situated contract carriers with the unique obligation to obtain underinsured motorist insurance coverage for their passengers in no less an amount than $250,000 per passenger because their vehicles are designed to carry 15 or fewer passengers violates the constitutional guarantees of equal protection under the law contained in the Fourteenth Amendment to the United States Constitution and Section 2 of Article 1 of the Illinois Constitution, because no other motor vehicle passenger carriers in Illinois are burdened with the unique requirement of maintaining such insurance, and there is no reasonable basis to impose such a requirement on PTI and others who are similarly situated.

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III.

The burdens allegedly imposed upon PTI by 625 ILCS 5/8-101(c), and the related penal statute, 625 ILCS 5/8-116, are unconstitutionally vague and uncertain in violation of the guarantees of due process of law contained in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 2 of the Illinois Constitution, in that the underinsured motorist insurance requirements contained therein make ambiguous references to vehicles designed to carry "fifteen or fewer" passengers and impose ambiguous levels of insurance in a "total amount" of "not less than $250,000 per passenger."

IV.

The ambiguous and onerous obligations allegedly imposed upon PTI by 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, constitute an undue and unreasonable burden on interstate commerce in violation of the Commerce Clause of the United States Constitution, Article 1, Section 8, Clause 3, in that contract motor carriers, such as PTI, which transport passengers in interstate commerce, could not know how much underinsured motorist insurance to obtain in advance of operating, unless one refused to operate any fleet vehicle until each vehicle was fully occupied, and this and other burdens imposed by the statute would unreasonably burden PTI and other similarly situated contract carriers.

V.

The Illinois Vehicle Code, of which 625 ILCS 5/8-101(c) is a part, does not provide any civil remedy for its alleged breach, such as that asserted by Plaintiff. Instead it provides at 625 ILCS 5/8-116 that any person who fails to comply with its provisions is

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guilty of a Class A misdemeanor. Thus, 625 ILCS 5/8-101(c) does not give plaintiff a basis for her private civil cause of action seeking money damages.

VI.

Plaintiff accepted full payment for any alleged injuries arising from the November 13, 2010 vehicle collision from the at-fault driver, Dwayne Bell, after voluntarily dismissing her personal injury action against PTI.

VII.

Plaintiff should be estopped, or otherwise legally barred, from claiming any right of recovery from PTI because she waived any right to pursue same, by dismissing PTI from her personal injury lawsuit, and thereafter failing to inform PTI that she intended to settle her personal injury claim against Dwayne Bell, thereby depriving PTI of any opportunity to intervene to preserve its subrogation rights against Bell.

VIII.

Plaintiff failed to exhaust all of her remedies to recover full recompense for her injuries from the at-fault motorist, Dwayne Bell, so she may not now seek recovery from PTI who she dismissed from the prior lawsuit.

IX.

Plaintiff has failed to exhaust her right to the UM/UIM benefits available to her under the UM/UIM provisions of her own insurance policy, which benefits must be set-off against the amount of any UIM benefits plaintiff may otherwise be entitled to recover from PTI.

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X.

Plaintiff has failed to exhaust her remedies against Union Pacific Railroad for compensation and medical benefits, which benefits must be set-off against the amount of any UIM benefits plaintiff may otherwise be entitled to recover from PTI.

XI.

PTI is further entitled to set-off any other benefits or monies that Plaintiff has recovered, or will recover, or is entitled to recover, from any other source related to the personal injuries and other damages she allegedly suffered arising out of the November 13, 2010 accident.

WHEREFORE, Defendant, PROFESSIONAL TRANSPORTATION, INC. prays that 625 ILCS 5/8-101(c) which is cited by Plaintiff, MARY TERRY CARMICHAEL, as the basis for her declaratory judgment action against PROFESSIONAL TRANSPORTATION, INC., be declared unconstitutional, and null and void, and/or that the Court declare that 625 ILCS 5/8-101(c) does not provide Plaintiff a private civil remedy, so that PROFESSSIONAL TRANSPORTATION, INC. may go hence without day.

COUNT II
(UPRR Declaratory Judgment)
(Re: Off-Track Vehicle Accident Benefits Coverage)

Defendant, PROFESSIONAL TRANSPORTATION, INC., makes no answer to Count II of Plaintiff's Complaint, because it does not appear to be addressed against PTI.

WHEREFORE, Defendant, PROFESSIONAL TRANSPORTATION, INC., asks that Count II of Plaintiff's Complaint for declaratory relief be dismissed as to PTI, and that PTI be granted such further relief as the Court may deem appropriate.

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COUNT III
(Declaratory Judgment – ACE)
(Re: Breach of Contract)

Defendant, PROFESSIONAL TRANSPORTATION, INC., makes no answer to Count III of Plaintiff's Complaint, because it does not appear to be addressed against PTI.

WHEREFORE, Defendant, PROFESSIONAL TRANSPORTATION, INC., asks that Count III of Plaintiff's Complaint for declaratory relief be dismissed as to PTI, and that PTI be granted such further relief as the Court may deem appropriate.

COUNTERCLAIM

PROFESSIONAL TRANSPORTATION, INC.'S COUNTERCLAIM AGAINST MARY TERRY CARMICHAEL AND A CERTAIN ILLINOIS STATE OFFICIAL, JESSE WHITE, ILLINOIS SECRETARY OF STATE

NOW COMES Defendant/Counter-Plaintiff, PROFESSIONAL TRANSPORTATION, INC. ("PTI"), by its attorneys, GEORGE H. BRANT of JUDGE, JAMES & KUJAWA, LLC and HUGH C. GRIFFIN of HALL PRANGLE & SCHOONVELD, LLC, pursuant to 735 ILCS 5/2-701 and 735 ILCS 5/2-614 and, for its counterclaim against MARY TERRY CARMICHAEL, and JESSE WHITE, ILLINOIS SECRETARY OF STATE, states as follows:

1. MARY TERRY CARMICHAEL has filed a declaratory judgment action against UNION PACIFIC RAILROAD COMPANY, PTI and ACE AMERICAN INSURANCE COMPANY, by which she seeks, among other things, a declaration that PTI should be obliged to compensate her, in whole or in part, for the alleged personal injuries she sustained in a motor vehicle collision which occurred on November 13, 2010 in the City of Chicago, Cook County, Illinois. (A copy of said filing is attached hereto as **EXHIBIT A.**)

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2. The declaratory judgment action filed by MARY TERRY CARMICHAEL alleges that the injuries for which she seeks recovery were sustained in the aforesaid collision at the time that she was a passenger in a motor vehicle owned and operated by PTI.

3. MARY TERRY CARMICHAEL also alleges that at the time of the aforesaid collision, she was an employee of UNION PACIFIC RAILROAD COMPANY; and that she was being transported between job sites by PTI, pursuant to a contract entered into between UNION PACIFIC RAILROAD COMPANY and PTI.

4. Previously, in an action filed against PTI in the Law Division of the Circuit Court of Cook County, Case No. 11 L 9679, counsel for MARY TERRY CARMICHAEL agreed to an order dismissing her complaint with prejudice against PTI because the conduct of PTI did not contribute, in whole or in part, to cause the accident at issue. (A copy of said Order is attached hereto as **EXHIBIT B**.)

5. Notwithstanding said dismissal order, MARY TERRY CARMICHAEL herein asserts that PTI as contract carrier whose vehicle was designed to carry 15 or fewer passengers is liable to Plaintiff pursuant to 625 ILCS 5/8-101(c) because PTI was obligated to maintain underinsured motorist insurance coverage in the amount of $250,000 per person, which might have supplemented any recovery MARY TERRY CARMICHAEL allegedly obtained from the party responsible for the vehicular collision of November 13, 2010.

6. Defendant/Counter-Plaintiff, PTI has herewith filed its Amended Answer and its Affirmative Defenses in this action admitting that it did transport UNION PACIFIC RAILROAD COMPANY employees by motor vehicle pursuant to an

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agreement reached with UNION PACIFIC; and that, in so doing, one of its vehicles, designed to carry 15 or fewer passengers, was carrying MARY TERRY CARMICHAEL when it was struck by another vehicle.

7. On information and belief, the motorist whose vehicle struck the PRI vehicle carrying MARY TERRY CARMICHAEL maintained bodily injury liability insurance policy limits of $20,000 per person.

8. PTI's Amended Answer raises affirmative defenses I – IV, directed against 625 ILCS 5/8-101(c) which assert that said statute is unconstitutional, and the claims of unconstitutionality are hereby restated as follows:

a) 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116 purporting to burden PTI and other similarly situated contract carriers whose vehicles are designed to carry 15 or fewer passengers with the unique responsibility of obtaining underinsured motorist coverage in an amount "not less than $250,000 per passenger," for the exclusive benefit of a limited class of passengers, i.e., "employees in the course of employment," constitutes prohibited "special legislation" in violation of the Illinois Constitution, Article 4, Section 3.

b) 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, purporting to burden PTI and other similarly situated contract carriers with the unique obligation to obtain underinsured motor vehicle insurance coverage for their passengers in no less an amount than $250,000 per passenger because their vehicles are designed to carry 15 or fewer passengers violates the constitutional guarantees of equal protection under the law contained in the Fourteenth Amendment to the United States Constitution and Section 2 of Article 1 of the Illinois Constitution, because no other motor vehicle

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passenger carriers in Illinois are burdened with the unique requirement of maintaining such insurance, and there is no reasonable basis to impose such a requirement on PTI and others who are similarly situated.

c) The burdens allegedly imposed upon PTI by 625 ILCS 5/8-101(c), and the related penal statute, 625 ILCS 5/8-116, are unconstitutionally vague and uncertain in violation of the guarantees of due process of law contained in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 2 of the Illinois Constitution, in that the underinsured motorist insurance requirements contained therein make ambiguous references to vehicles designed to carry "fifteen or fewer" passengers and impose ambiguous levels of insurance in a "total amount" of "not less than $250,000 per passenger."

d) The ambiguous and onerous obligations allegedly imposed upon PTI by 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, constitute an undue and unreasonable burden on interstate commerce in violation of the Commerce Clause of the United States Constitution, Article 1, Section 8, Clause 3, in that contract motor carriers, such as PTI, which transport passengers in interstate commerce, could not know how much underinsured motorist insurance to obtain in advance of operating, unless one refused to operate any fleet vehicle until each vehicle was fully occupied, and this and other burdens imposed by the statute would unreasonably burden PTI.

9. JESSE WHITE, ILLINOIS SECRETARY OF STATE, is an appropriate party in this case because he is charged with enforcing the Illinois Vehicle Code, particularly 625 ILCS 5/8-101(c), , which is relied upon by MARY TERRY CARMICHAEL, and which PTI alleges is unconstitutional.

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10. No other motor carriers in Illinois, other than those who contract to transport employees in the course of their employment in vehicles designed to carry 15 or fewer passengers, are required to carry underinsured motorist insurance coverage in the amount of $250,000 per passenger.

11. There is no reasonable basis for concluding that those motor carriers who transport employees in the course of their employment in motor vehicles designed to carry 15 passengers or less, are more likely to have their vehicles struck by underinsured motorists, or that motor carriers, such as PTI, should be singled out by law and burdened with the unique obligation to secure $250,000 in underinsured motorist coverage, per passenger, to guard against such an eventuality.

12. According to the terms of 625 ILCS 5/8-101(c) and the related penal statute, 625 ILCS 5/8-116, PTI, and others similarly situated, could avoid the penal terms of the statute by owning and operating motor vehicles designed to carry 16 or fewer passengers, rather than 15 or fewer passengers, and there is no reasonable basis for making such a distinction in the penal reach of said statute.

13. House Transcript, 2005 Regular Session No. 28, which pertains to the passage of 625 ILCS 5/8-101(c), documents that the underinsured motorist insurance provision at issue was enacted at the behest of railroad labor unions which sought to burden contract motor carriers who transported their union membership with the unique obligation to carry underinsured motorist insurance coverage in no less an amount than $250,000 per passenger. (See, **EXHIBIT C** attached hereto).

14. Plaintiff, MARY TERRY CARMICHAEL, is a railroad union member who has brought her declaratory action against PTI, in an attempt to benefit from the

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special legislation that was enacted at her union's behest, allegedly burdening PTI, and others similarly situated, with the obligation to obtain underinsured motorist insurance coverage in an amount no less than $250,000 per passenger.

15. That by virtue of the foregoing, there is a case or controversy existing between PTI, MARY TERRY CARMICHAEL and JESSE WHITE, ILLINOIS SECRETARY OF STATE, and according to the terms and provisions of 735 ILCS 5/2-701, this Court is vested with the power to declare the rights and liabilities of the parties hereto, as regards the constitutionality of 625 ILCS 5/8-101(c).

WHEREFORE, Defendant/Counter-Plaintiff, PROFESSIONAL TRANSPORTATION, INC. prays that 625 ILCS 5/8-101(c), which is cited as the basis for MARY TERRY CARMICHAEL'S cause of action against PROFESSIONAL TRANSPORTATION, INC., be declared unconstitutional, null and void; that the penal provision in 625 ILCS 5/8-116 be declared unconstitutional as applied to the provisions of 625 ILCS 5/8-101(c) here at issue; that MARY TERRY CARMICHAEL's declaratory judgment action be dismissed with prejudice as to PTI; and that PTI be awarded such further relief as seems just and proper.

Respectfully submitted,

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GEORGE H. BRANT
JUDGE , JAMES & KUJAWA, LLC
One of the attorneys for Defendant and Counter-Plaintiff
PROFESSIONAL TRANSPORTATION, INC.

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NO. 25953

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

MARY TERRY CARMICHAEL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**No.**
UNION PACIFIC RAILROAD COMPANY; a foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corporation d/b/a PTI and ERIC ANDERSON, individually and as agent of PTI; and DWAYNE BELL,	)	**JURY TRIAL DEMANDED**
	)	
Defendants.	)	

FILED - IRIS
2011 SEP 15 PM 1:14
DOROTHY LR
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

COMPLAINT

Comes now, Plaintiff, **Mary Terry Carmichael,** and for her claims and causes of action against the Defendants, **Union Pacific Railroad Company**; a foreign corporation; **Professional Transportation, Inc.**, a foreign corporation d/b/a **PTI** and **Eric Anderson**, individually and as agent of **PTI**; and **Dwayne Bell**, states and alleges as follows:

JURISDICTION AND PARTIES

1. That at all times herein material to this lawsuit, Plaintiff, **Mary Terry Carmichael,** was and is a resident of the Calumet City, Cook County, Illinois

2. Defendant, **Union Pacific Railroad Company (hereinafter "UPRR"),** is now, and at all times relevant hereto, a corporation duly organized and existing according to law engaged in business as a common carrier by rail in interstate commerce. The **UPRR's** principal place of business is located in Omaha, Nebraska. **UPRR**, at all relevant times, does business as a common carrier by rail in Cook County, Illinois. The **UPRR**, owns, operates and controls many miles of

Exhibit E

track, rail yards and related facilities throughout the County of Cook, State of Illinois.

3. That at all times material herein, Defendant, **Professional Transportation, Inc.**, a foreign corporation d/b/a **PTI, (hereinafter "PTI")** was and is a corporation duly organized and existing under the laws of the State of Indiana, was at all times herein mentioned a common carrier for hire to transport passengers and contracted with Defendant **UPRR** to transport its railroad employees within in the State of Illinois including the county where this action is filed.

4. Defendant, **Eric Anderson, (hereinafter "Anderson")**, is now and was at all times herein mentioned, a resident of the City of Chicago, Cook County, Illinois and was an agent driver for **PTI** operating a motor vehicle, a van, used to transport **UPRR** railroad employees including plaintiff on November 13, 2010.

5. Defendant, **Dwayne Bell (hereinafter "Bell")**, is now and was at all times herein mentioned, a resident of the City of Chicago, Cook County, Illinois and was operating a motor vehicle on November 13, 2010 near the intersection of Roosevelt Rd. and Blue Island Ave. In the City of Chicago, Cook County, Illinois.

6. That Plaintiff **Mary Terry Carmichael** brings this action against **PTI, Anderson and Bell**, under common law; and that Plaintiff brings this cause of action against, **UPRR** under the Federal Employers' Liability Act (FELA), Title 45 U.S.C. § 51 et seq.; This Court has jurisdiction over Defendant **UPRR** and venue is proper in this court and that this action is timely commenced within the meaning of 45 U.S.C. § 56.

COUNT I - COMMON LAW NEGLIGENCE
(PTI vicarious liability)

Plaintiff, **Mary Terry Carmichael**, for her first cause of action against the Defendant, **PTI**

, herein states and alleges as follows:

1-6. Plaintiff, **Mary Terry Carmichael**, adopts and realleges paragraphs 1 through 6 as paragraphs 1 through 6 of Count I.

7. That at all times material herein, Defendant **PTI.** was an Indiana corporation which operated as a common carrier that offered transportation services for hire to the public; and that at the time of the accident described herein, **Anderson** was an employee and agent of **PTI,** working in the course and scope of his employment and agency with **PTI,** and further, that the use of the van described herein was in furtherance of the business of **PTI,** and as a consequence, **PTI.** is responsible for the conduct of **Anderson.**

8. That on or about November 13, 2010, at approximately 2 15 a.m., as part of her employment with Defendant, **UPRR,** Plaintiff and her co-workers, were being transported to their assigned duty location as passengers in the van owned by Defendant **PTI. Anderson,** employee and agent of **PTI,**.while in the course and scope of his employment; was driver of said van while traveling eastbound on Roosevelt Road nearing the intersection of Blue Island Avenue in the City of Chicago, Cook County, Illinois.

9. That at the aforesaid time and place, suddenly and without warning to Plaintiff, the van operated by **Anderson** collided with a motor vehicle owned and operated by **Bell** and that Plaintiff was thereby caused to sustain injuries as set forth hereinafter.

10. That at all times material herein, Defendant **PTI** and its employee and agent, **Anderson,** were operating as a common carrier, and therefore were bound to exercise the highest degree of care in transporting the public in a safe manner.

11. That notwithstanding said duty, Defendant **PTI** and its employee and agent,

Anderson breached this duty and were guilty of one or more of the following negligent acts or omissions at the time and place stated above:

a) Failed to keep a proper and sufficient lookout while operating the van;

b) Failed to properly maintain the van in the proper lane;

c) Failed to follow proper lane usage, a violation of 625 ILCS 5/11-709, by entering the lane occupied by the vehicle operated by **Bell**;

d) Failed to maintain an adequate distance between van and the vehicle operated by **Bell** in order to avoid collision;

e) Failed to operate the van at a proper speed;

f) Failed to maintain proper control over the van;

g) Failed to sound the horn when such action was reasonably necessary to warn the other vehicle of a pending collision;

h) Failed to stop the van prior to impact;

i) Failed to see that the van was approaching the vehicle driven by **Bell** so closely as to present an immediate danger;

j) other acts of negligence.

12. That as a direct and proximate cause of one or more of the aforesaid negligent acts or omissions of **PTI** and its employee and agent, **Anderson**, Plaintiff sustained severe and permanent physical injuries to her body including her neck, upper and lower back, shoulders, and arms, and the bones, muscles, tissues, nerves, ligaments and internal parts thereof.

13. That as a result, of the negligence of Defendant **PTI** and its employee and agent, **Anderson**, Plaintiff was permanently injured, has suffered pain in the past and will suffer pain in the future; has incurred expenses for medical, hospital, nursing and related care, and will incur further like expenses in the future; has suffered loss of earnings and loss of future earning capacity;

and has suffered personal injury and disability all to his injury and damage, the exact amount of which expenses Plaintiff is unable to accurately estimate and determine at this time.

14. That due to the negligence of Defendant **PTI** and its employee and agent, **Anderson**, Plaintiff sustained severe and permanent injury to her neck, upper and lower back, shoulders, and arms, and the bones, muscles, tissues, nerves, ligaments and internal parts thereof, and has suffered and will continue to suffer great bodily pain and mental anguish, and loss of enjoyment of life.

WHEREFORE, Plaintiff, **Mary Terry Carmichael**, prays that judgment be entered against Defendant, **PTI** for recovery of reasonable damages in an amount greater than Seventy-Five Thousand and No/100 ($75,000.00) Dollars, together with pre- and post-judgment interest thereon, and for her costs and disbursements herein and for such other and further relief to which she may appear entitled.

COUNT II COMMON LAW NEGLIGENCE
(Eric Anderson)

Plaintiff, **Mary Terry Carmichael**, for her second cause of action against the Defendant, **Anderson**, herein states and alleges as follows:

1-8. Plaintiff, **Mary Terry Carmichael**, adopts and realleges paragraphs 1 through 8 of Count I as paragraphs 1 through 6 of Count II.

9. That at the aforesaid time and place, suddenly and without warning to Plaintiff, the van operated by Defendant **Anderson** collided with a motor vehicle owned and operated by **Bell** and that Plaintiff was thereby caused to sustain injuries as set forth hereinafter.

10. That at all times material herein, Defendant **Anderson**, was operating as a common carrier, and therefore was bound to exercise the highest degree of care in transporting the public in

a safe manner.

11. That notwithstanding said duty, Defendant **Anderson** breached this duty and was guilty of one or more of the following negligent acts or omissions at the time and place stated above:

a) Failed to keep a proper and sufficient lookout while operating the van;

b) Failed to properly maintain the van in the proper lane;

c) Failed to follow proper lane usage, a violation of 625 ILCS 5/11-709, by entering the lane occupied by the vehicle operated by **Bell**;

d) Failed to maintain an adequate distance between van and the vehicle operated by **Bell** in order to avoid collision;

e) Failed to operate the van at a proper speed;

f) Failed to maintain proper control over the van;

g) Failed to sound the horn when such action was reasonably necessary to warn the other vehicle of a pending collision;

h) Failed to stop the van prior to impact;

i) Failed to see that the van was approaching the vehicle driven by **Bell** so closely as to present an immediate danger;

j) other acts of negligence.

12. That as a direct and proximate cause of one or more of the aforesaid negligent acts or omissions of **Anderson**, Plaintiff sustained severe and permanent physical injuries to her body including her neck, upper and lower back, shoulders, and arms, and the bones, muscles, tissues, nerves, ligaments and internal parts thereof.

13. That as a result, of the negligence of Defendant **Anderson**, Plaintiff was permanently injured, has suffered pain in the past and will suffer pain in the future; has incurred expenses for medical, hospital, nursing and related care, and will incur further like expenses in the future; has

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suffered loss of earnings and loss of future earning capacity; and has suffered personal injury and disability all to his injury and damage, the exact amount of which expenses Plaintiff is unable to accurately estimate and determine at this time.

14. That due to the negligence of Defendant **Anderson**, Plaintiff sustained severe and permanent injury to her neck, upper and lower back, shoulders, and arms, and the bones, muscles, tissues, nerves, ligaments and internal parts thereof, and has suffered and will continue to suffer great bodily pain and mental anguish, and loss of enjoyment of life.

WHEREFORE, Plaintiff, **Mary Terry Carmichael**, prays that judgment be entered against Defendant, **Anderson**, for recovery of reasonable damages in an amount greater than Seventy-Five Thousand and No/100 ($75,000.00) Dollars, together with pre- and post-judgment interest thereon, and for her costs and disbursements herein and for such other and further relief to which she may appear entitled.

COUNT III COMMON LAW NEGLIGENCE
(Dwayne Bell)

Plaintiff, **Mary Terry Carmichael** , for her third cause of action against the Defendant, **Dwayne Bell**, herein states and alleges as follows:

1-6. Plaintiff, **Mary Terry Carmichael**, adopts and realleges paragraphs 1 through 6 of Count II as paragraphs 1 through 6 of Count III.

7. On said date, defendant, **Bell**, owned and operated a 2000 Dodge Intrepid, traveling eastbound on Roosevelt in the left lane, just short of the Blue Island Avenue intersection, in the City of Chicago, Cook County, Illinois.

8. While plaintiff was in the van driven by **Anderson, Bell's** vehicle entered into the

right and struck the van in the right front portion of the van, causing a collision between the two vehicles.

9. Defendant, **Bell**, had a duty to exercise reasonable care while operating his motor vehicle.

10. That notwithstanding said duty, defendant was guilty of one or more of the following negligent acts or omissions at the time and place stated above:

a) Failed to keep a proper and sufficient lookout while operating his vehicle;

b) Failed to properly maintain his vehicle in the proper lane;

c) Failed to follow proper lane usage, a violation of 625 ILCS 5/11-709, by entering the lane of said vehicle in which plaintiff was a passenger;

d) Failed to maintain an adequate distance between his vehicle and the vehicle occupied by plaintiff in order to avoid collision;

e) Failed to operate his vehicle at a proper speed;

f) Failed to maintain proper control over his vehicle;

g) Failed to sound the horn when such action was reasonably necessary to warn plaintiff's driver of a pending collision;

h) Failed to stop his vehicle prior to impact;

i) Failed to see that he was approaching the vehicle occupied by plaintiff so closely as to present an immediate danger;

j) other acts of negligence.

11. That as a direct and proximate cause of one or more of the aforesaid negligent acts or omissions of **Bell**, Plaintiff sustained severe and permanent physical injuries to her body including her neck, upper and lower back, shoulders, and arms, and the bones, muscles, tissues, nerves, ligaments and internal parts thereof.

12. That as a result, of the negligence of Defendant, **Bell**, Plaintiff was permanently injured, has suffered pain in the past and will suffer pain in the future; has incurred expenses for medical, hospital, nursing and related care, and will incur further like expenses in the future; has suffered loss of earnings and loss of future earning capacity; and has suffered personal injury and disability all to his injury and damage, the exact amount of which expenses Plaintiff is unable to accurately estimate and determine at this time.

13. That due to the negligence of Defendant **Bell**, Plaintiff sustained severe and permanent injury to her neck, upper and lower back, shoulders, and arms, and the bones, muscles, tissues, nerves, ligaments and internal parts thereof, and has suffered and will continue to suffer great bodily pain and mental anguish, and loss of enjoyment of life.

WHEREFORE, Plaintiff, **Mary Terry Carmichael**, prays that judgment be entered against Defendant, **Dwayne Bell**, for recovery of reasonable damages in an amount greater than Seventy-Five Thousand and No/100 ($75,000.00) Dollars, together with pre- and post-judgment interest thereon, and for her costs and disbursements herein and for such other and further relief to which she may appear entitled.

COUNT IV FEDERAL EMPLOYERS' LIABILITY ACT - NEGLIGENCE (UPPR)

Plaintiff, **Mary Terry Carmichael**, for her fourth cause of action against the Defendant, **UPPR**, herein states and alleges as follows:

1-9. Plaintiff, **Mary Terry Carmichael**, adopts and realleges paragraphs 1 through 9 of Count I as paragraphs 1 through 9 of Count IV.

10. That at all times herein material, Plaintiff **Mary Terry Carmichael** was employed

by Defendant **UPPR** as a Conductor, and that at the time of the occurrence of the incident described herein, all or part of Plaintiff's duties were in the furtherance of Defendant **UPPR** business of interstate commerce. Specifically, Plaintiff **Mary Terry Carmichael** was being transported to Defendant **UPPR**'s Canal Street yard located in Chicago, Cook County, Illinois to pick-up locomotives and bring them back to **UPPR**'s Global One yard also located in Chicago, Cook County, Illinois.

11. That the Plaintiff, at the aforesaid time and, while in the course and scope of her employment with Defendant **UPPR**, was being transported by Defendant **PTI** pursuant to the terms of an agreement whereby Defendant **PTI** had contracted with Defendant **UPPR** to provide transportation for **UPPR**'s employees to and from various work locations; and that Defendant **PTI** and its employee and agent, **Anderson** were thereby performing an "operational activity" of the railroad, and were thus "agents" of Defendant **UPPR**, for the purpose of the FELA.

12. That while Plaintiff was riding in the van hired by Defendant **UPPR** to transport her to her assigned work location, she was knocked sideways suddenly and without warning when the van collided with the vehicle owned and operated by Dwayne Bell. That, as a result, Plaintiff was knocked backwards by the van, immediately felt a sharp pain in her neck, back and shoulders, and was caused to suffer and sustain severe and permanent injuries to her body including her neck, uppe and lower back, shoulders, and arms, and the bones, muscles, tissues, nerves, ligaments and internal parts thereof..

13. That Defendant **UPPR**, its agents, employees, and officers, had a duty to provide plaintiff with a reasonably safe place to work and in violation of the FELA, 45 U.S.C. §§ 51 - 60, failed in its duty by the following:

a) In failing and neglecting to provide Plaintiff with a reasonably safe place to work as required by law;

b) In failing and neglecting to adopt, install, implement and enforce a safe method and procedure for the described operation;

c) In failing to provide Plaintiff with safe and proper transportation in which to do said work;

d) In failing and neglecting to inspect and determine the qualifications of the vehicles, owners and drivers with which it contracted; including, but not limited to, negligently requiring and permitting its employees to be transported in hazardous and inadequately and improperly equipped and/or maintained vehicles;

e) In negligently assigning Plaintiff to be transported to various worklocations in an unsafe and dangerous vehicle;

f) In failing and neglecting to properly monitor the actions of its agents and drivers, specifically Defendant **PTI** and its employee and agent, **Anderson** with respect to the transportation of **UPPR** employees;

g) In failing to properly train its agents and drivers, specifically Defendant **PTI** and its employee and agent, **Anderson** with respect to the transportation of **UPPR** employees;

h) In failing to adopt, install, implement, and enforce safe methods and procedures for the transportation of **UPPR** employees;

i) In failing to adopt, install, implement and enforce a reasonable safety program designed to prevent the type of collisions that occurred while plaintiff and her crew were passengers in the van hired by **UPPR**;

j) In failing and neglecting to properly warn Plaintiff; and,

k) Other acts of negligence.

14. That as a direct result, in whole or in part, of the negligence of Defendant **UPPR** and its agents **PTI** and its employee and agent, **Anderson** in violation of the FELA as set forth above, Plaintiff sustained severe and permanent physical injuries to her neck, upper and lower back, shoulders, and arms, and the bones, muscles, tissues, nerves, ligaments and internal parts thereof..

15. That as a direct result, in whole or in part, of the negligence of Defendant **UPPR** and its agents **PTI** and its employee and agent, **Anderson** in violation of the FELA as set forth above, Plaintiff was permanently injured, has suffered pain in the past and will suffer pain in the future; has incurred expenses for medical, hospital, nursing and related care, and will incur further like expenses in the future; has suffered loss of earnings and loss of future earning capacity; and has suffered personal injury and disability all to his injury and damage, the exact amount of which expenses Plaintiff is unable to accurately estimate and determine at this time;

16. That due, in whole or in part, to Defendant's negligence in violation of the FELA, Plaintiff sustained severe and permanent injury to her neck, upper and lower back, shoulders, and arms, and the bones, muscles, ligaments and tissues thereof, and has suffered and will continue to suffer great bodily pain and mental anguish, and loss of enjoyment of life.

WHEREFORE, Plaintiff, **Mary Terry Carmichael**, prays that judgment be entered against Defendant, **UPPR** , for recovery of reasonable damages in an amount greater than Seventy-Five Thousand and No/100 ($75,000.00) Dollars, together with pre- and post-judgment interest thereon, and for her costs and disbursements herein and for such other and further relief to which she may appear entitled.

LAW OFFICE OF JOHN BISHOF, P.C.

By: _____

John S. Bishof, Jr., IL ATTY. #25953
77 West Washington St., Suite 1910
Chicago, IL 60602
Telephone: 312-630-2048
Facsimile: 312-630-2085

ACE USA
ACE American Insurance Company
436 Walnut Street
P. O. Box 1000
Philadelphia, PA 19106-3703

Business Auto Declarations

POLICY NUMBER: ISA H08589410 EXPIRING POLICY NUMBER: ISA H08577298

Renewal

ITEM ONE

Named Insured: Professional Transportation, Inc.

Address: 3700 Morgan Avenue
Evansville, IN 47715

Producer Number: 174114
Producer Name: Marsh USA Inc
Producer Address: 500 West Monroe Street
Chicago, IL 60661-2595

INDUSTRY CODE	SIC CODE	MARKET HAZARD CODE	BILLING METHOD		COMMISSION	MARKETING OFFICE CODE
			DIRECT	PRODUCER		
	4789			X	Nil	NYU/5DU

Form of Business: ☒ Corporation ☐ Limited Liability Company ☐ Other ____

Named Insured's business:

Policy Period: Policy covers from 04/01/2010 to 04/01/2011 12.01 am standard time at the named insured's address stated above.

Audit Period: Annual, unless otherwise stated: ☐ Semi-Annual ☐ Quarterly ☐ ____

Estimated Total Premium: (Including taxes and surcharge amounts) $228,010** Deposit/Minimum Premium

Kentucky Domestic, Foreign & Alien Insurers Monthly Surcharge $138

Texas Automobile Theft Prevention Authority Fee $11

**Refer to the Notice of Election

In return for the payment of premium and subject to all the terms of this policy we agree with you to provide the insurance as stated in this policy.

DA-19661 (02/2006)

Exhibit F

C.

POLICY NUMBER: ISA H08589410

ENDT. #15

COMMERCIAL AUTO
CA 21 30 11 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ILLINOIS UNINSURED MOTORISTS COVERAGE

For a covered "auto" licensed or principally garaged in, or "garage operations" conducted in Illinois, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:	Professional Transportation, Inc.
Endorsement Effective Date:	04/01/2010

SCHEDULE

Limit Of Insurance: $ 40,000	Each "Accident"
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Coverage

1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "uninsured motor vehicle". The damages must result from "bodily injury" sustained by the "insured" caused by an "accident". The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle".
2. Any judgment for damages arising out of a "suit" brought without our written consent is not binding on us.

B. Who Is An Insured

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are "insureds"
   a. The Named Insured and any "family members"
   b. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto" The covered "auto" must be out of service because of its breakdown, repair servicing, "loss" or destruction.

'presents'. And this Bill, having received the Constitutional Majority, is hereby declared passed. On the Order of Third Readings, we have House Bill… excuse who? On the Order of Third Readings, we have House Bill 2510. Read the Bill, Mr. Clerk."

Clerk Mahoney: "House Bill 2510, a Bill for an Act concerning transportation. Third Reading of this House Bill."

Speaker Turner: "The Gentleman from Madison, Representative Hoffman."

Hoffman: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. What this does is it increases the liability coverage that must be carried to $250 thousand per passenger on contract carriers and they must file proof of this for financial responsibility."

Speaker Turner: "The Gentleman from Cook, Representative Parke, for what reason do you rise?"

Parke: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "He indicates he will."

Parke: "Representative, it shows in our staff analysis that the Railroad Association is opposed. Is that still the case?"

Hoffman: "Yeah, it's my understanding that this is… the Railroad Association is opposed, the United Transportation Union as well as the Brotherhood of… of Locomotive Engineers are in favor."

Parke: "And the reason that they're opposed is because this is a added liability that they are having to assume? And if so, why don't you collectively bargain for it?"

Hoffman: "That has… that has nothing to do with… that has nothing to do with collective bargaining. All this says is what happens when you… when you're on a railroad and you run the ri… you run the rail… the train… at the end of the train… where the train stops, you have to get back to where you started. So, they have these carriers that… that they contract with who drive the people who work on the train back to their original starting spot. What we're saying is they have to have a minimum amount of liability coverage, just like we say other contract carriers have to have a minimum amount of liability coverage."

Parke: "Yeah, but you're saying you want to increase the minimum."

Hoffman: "Yes."

Parke: "And therefore, why don't you collectively bargain for that? If you want it, why not collectively bargain when you're at the bargaining table and say we want this additional benefit?"

Hoffman: "I don't believe it's an issue… it is not a benefit to working people. It's…"

Parke: "It's an additional cost to the railroads."

Hoffman: "It could be an additional cost if the contract carrier were to pass the cost on to the railroad."

Parke: "Well, thank you. I must respectfully rise in opposition to the Gentleman's legislation."

Speaker Turner: "Seeing no further questions, the question is, 'Shall House Bill 2510 pass?' All those in favor should vote 'aye'; all those opposed vote 'no'. The voting is now

Clerk Mahoney: "House Bill 2510, a Bill for an Act concerning transportation. Third Reading of this House Bill."

Speaker Turner: "The Gentleman from Madison, Representative Hoffman."

Hoffman: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. What this does is it increases the liability coverage that must be carried to $250 thousand per passenger on contract carriers and they must file proof of this for financial responsibility."

Speaker Turner: "The Gentleman from Cook, Representative Parke, for what reason do you rise?"

Parke: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "He indicates he will."

Parke: "Representative, it shows in our staff analysis that the Railroad Association is opposed. Is that still the case?"

Hoffman: "Yeah, it's my understanding that this is... the Railroad Association is opposed, the United Transportation Union as well as the Brotherhood of... of Locomotive Engineers are in favor."

Parke: "And the reason that they're opposed is because this is a added liability that they are having to assume? And if so, why don't you collectively bargain for it?"

Hoffman: "That has... that has nothing to do with... that has nothing to do with collective bargaining. All this says is what happens when you... when you're on a railroad and you run the ri... you run the rail... the train... at the end of the train... where the train stops, you have to get back to where you started. So, they have these carriers that... that they contract with who drive the people who work on the train back to their original starting spot. What we're saying is they have to have a minimum amount of liability coverage, just like we say other contract carriers have to have a minimum amount of liability coverage."

Parke: "Yeah, but you're saying you want to increase the minimum."

Hoffman: "Yes."

Parke: "And therefore, why don't you collectively bargain for that? If you want it, why not collectively bargain when you're at the bargaining table and say we want this additional benefit?"

Hoffman: "I don't believe it's an issue... it is not a benefit to working people. It's...'DDD'

Parke: "It's an additional cost to the railroads."

Hoffman: "It could be an additional cost if the contract carrier were to pass the cost on to the railroad."

Parke: "Well, thank you. I must respectfully rise in opposition to the Gentleman's legislation."

Speaker Turner: "Seeing no further questions, the question is, 'Shall House Bill 2510 pass?' All those in favor should vote 'aye'; all those opposed vote 'no'. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? The Clerk shall take the record. On this question, there are 86 voting 'aye', 26 voting 'no', 0 'presents'. And this Bill, having received the Constitutional Majority, is hereby declared passed. Mr. Clerk, for the record, you should add Representative Bailey and Representative Washington, they both came up and said that their switches was not working on House Bill 2490. Please let the record reflect that they both wanted to vote 'aye'. We have one more Bill, House Bill 15. Representative Hannig. Read the Bill, Mr. Clerk."

House Transcript, 94th General Assembly, Regular Session, 28th Legislative Day, Illinois House Transcript, 2005 Reg. Sess. No. 28

Safety Report

Evaluation of the Rollover Propensity of 15-passenger Vans

NTSB/SR-02/03
PB2002-917005
Notation 7498
Adopted October 15, 2002

National Transportation Safety Board
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594

National Transportation Safety Board. 2002. *Evaluation of the Rollover Propensity of 15-passenger Vans*. Safety Report NTSB/SR-02/03. Safety Study NTSB/SR-02/03. Washington, DC.

Abstract: Fifteen-passenger vans, which make up about 0.25 percent of the passenger vehicle fleet in the United States, are frequently used to transport school sports teams, van pools, church groups, and other groups. Although they are involved in a proportionate number of fatal accidents compared to their percentage in the fleet, they are involved in a higher number of single-vehicle accidents involving rollovers than are other passenger vehicles. Various factors have been associated with 15-passenger van rollover, particularly occupancy level and vehicle speed. Fully loading or nearly loading a 15-passenger van causes the center of gravity to move rearward and upward, which increases its rollover propensity and could increase the potential for driver loss of control in emergency maneuvers. The National Highway Traffic Safety Administration has been evaluating vehicle rollover for several years. The agency has initiated rulemaking activities concerning vehicle rollovers, established a rollover resistance rating system, and is currently examining dynamic testing procedures; however, these programs have not been extended to 15-passenger vans. As a result of this safety report, the National Transportation Safety Board issued safety recommendations to the National Highway Traffic Safety Administration and to the manufacturers of 15-passenger vans.

Contents

Conversion Factors for the International System of Units (SI)

To convert from	*into*	*multiply by*
feet (ft)	meters (m)	0.3048
inches (in)	centimeters (cm)	2.54
miles (U.S. statute)	kilometers (km)	1.609344
pounds (lb)	kilograms (kg)	0.4535924

Acronyms and Abbreviations

ANPRM	advance notice of proposed rulemaking
CFR	*Code of Federal Regulations*
CG	center of gravity
ESC	electronic stability control
FARS	Fatal Analysis Reporting System
FMVSS	*Federal Motor Vehicle Safety Standards*
FR	*Federal Register*
GVWR	gross vehicle weight rating
NAS	National Academy of Sciences
NCAP	New Car Assessment Program
NHTSA	National Highway Traffic Safety Administration
NTSB	National Transportation Safety Board
SSF	static stability factor
TREAD	Transportation, Recall Enhancement, Accountability, and Documentation Act of 2000
VIN	vehicle identification number

Executive Summary

.Fifteen-passenger vans, which make up about 0.25 percent of the passenger vehicle fleet in the United States, are frequently used to transport school sports teams, van pools, church groups, and other groups. Although they are involved in a proportionate number of fatal accidents compared to their percentage in the fleet, they are involved in a higher number of single-vehicle accidents involving rollovers than are other passenger vehicles. Various factors have been associated with 15-passenger van rollover, particularly occupancy level and vehicle speed. Because these vans are designed to carry 15 passengers, the Safety Board is particularly concerned about the relationship between occupancy level and vehicle rollover. Fully loading or nearly loading a 15-passenger van causes the center of gravity to move rearward and upward, which increases its rollover propensity and could increase the potential for driver loss of control in emergency maneuvers.

The National Highway Traffic Safety Administration (NHTSA) has been evaluating vehicle rollover for several years. NHTSA has initiated rulemaking activities concerning vehicle rollovers, established a rollover resistance rating system, and is currently examining dynamic testing procedures; however, these programs have not been extended to 15-passenger vans. The Safety Board is concerned that NHTSA has not included 15-passenger vans in the dynamic testing or proposed rollover resistance ratings for this class of vehicle, given their high rate of rollover involvement in single-vehicle accidents, particularly under fully or nearly loaded conditions.

As a result of this safety report, the National Transportation Safety Board issued new safety recommendations to the National Highway Traffic Safety Administration and the manufacturers of 15-passenger vans.

Consumer Advisories

Following several high publicity 15-passenger van accidents, NHTSA published a consumer advisory in April 2001. The advisory contained a cautionary warning to users of 15-passenger vans because of an increased rollover risk under certain conditions. NHTSA issued a second consumer advisory in April 2002, making the following safety tips:

- Protect passengers with a seat belt policy;
- Select an experienced driver;
- Make sure the driver is not fatigued or driving too fast;
- Properly maintain your tires; and
- Avoid placing any load on the roof—that increases the chance of rollover.

Summary

Fifteen-passenger vans, which make up about 0.25 percent of the passenger vehicle fleet, are frequently used to transport school sports teams, vanpools, church groups, and other groups. Although they are involved in a proportionate number of fatal accidents compared to their percentage in the fleet, they are involved in a higher rate of single-vehicle accidents involving rollovers than are other passenger vehicles.

Various factors have been associated with vehicle rollover, particularly occupancy level and vehicle speed. Both the FARS data and a subset of State census data show that the rollover rate for fully loaded or nearly loaded 15-passenger vans is about three times the rollover ratio of vans with fewer than 5 passengers. Further, statistical analyses have shown that increased occupancy level and vehicle speed (measured by either travel speed or posted speed limit) consistently predict the increased likelihood of 15-passenger van rollover. Other accident characteristics have also been shown to be related to vehicle rollover but with less reliability.

Because these vans are designed to carry 15 passengers and frequently are used by various organizations to transport many passengers to activities, the Safety Board is particularly concerned about the relationship between occupancy level and vehicle rollover. Fully loading or nearly loading a 15-passenger van causes the center of gravity to move rearward and upward, which increases the vehicle's rollover propensity and could increase the potential for driver loss of control in emergency maneuvers. Simulations conducted by NHTSA illustrate how fully loading a 15-passenger van could adversely affect the vehicle's handling properties in extreme maneuvers.

NHTSA has been evaluating vehicle rollover for several years. At the direction of the TREAD Act of 2000, NHTSA expanded its dynamic testing on several vehicles, but it does not include 15-passenger vans. Further, although NHTSA has initiated rulemaking activities concerning vehicle rollovers, established a vehicle rollover resistance rating system, and is currently examining dynamic testing procedures, these programs do not extend to 15-passenger vans. Given their high rate of rollover involvement in single-vehicle accidents, particularly under fully loaded conditions for which they are designed and are being used, the Board believes that 15-passenger vans should be included in dynamic testing and proposed rollover resistance ratings for this class of vehicle. Information from the dynamic testing also has the potential to develop a dynamic testing protocol that could supplement the NCAP rollover resistance rating system. Therefore, the Safety Board recommends that the National Highway Traffic Safety Administration include 15-passenger vans in its dynamic testing program. The dynamic testing should test the performance of 15-passenger vans under various load conditions.

The Safety Board recognizes that NHTSA has issued two consumer advisories regarding the propensity of 15-passenger vans to roll over. The NCAP program also serves as an available source of consumer information about the safety potential of vehicles in

C 273

crashes; however, the NCAP rollover resistance rating system does not currently include 15-passenger vans. The Safety Board believes that, at a minimum, the rollover resistance rating system should be extended to include 15-passenger vans. Therefore, the Safety Board recommends that NHTSA extend the NCAP rollover resistance program to 15-passenger vans, especially for various load conditions. The inclusion of 15-passenger vans in NHTSA's dynamic testing program, as described and recommended earlier in this report, would provide valuable information by which to supplement the rollover resistance rating system. Thus, the Board also recommends that in extending the rollover resistance program to 15-passenger vans, NHTSA also use the dynamic testing results of 15-passenger vans to supplement the static measures of stability in the NCAP rollover resistance program.

Various technological systems have been developed to assist drivers in maintaining control of the vehicle. Although some of these systems are currently available on some vehicle types, most of them are not currently available on 15-passenger vans. Given the rollover propensity of these vehicles, technological systems such as traction control, lane departure systems, and particularly electronic stability control systems may have potential to assist drivers in maintaining control of 15-passenger vans. The Safety Board therefore recommends that NHTSA, in conjunction with the manufacturers of 15-passenger vans, evaluate, and test as appropriate, the potential of technological systems, particularly electronic stability control systems, to assist drivers in maintaining control of 15-passenger vans.

Findings

1. Although 15-passenger vans are involved in a proportionate number of accidents compared to their percentage in the fleet, they are involved in a higher rate of single-vehicle accidents involving a rollover than are other passenger vehicles.

2. Statistical analyses have shown that increased occupancy level and vehicle speed (measured by either travel speed or posted speed limit) consistently predict the increased likelihood of 15-passenger van rollover.

3. Although the National Highway Traffic Safety Administration has initiated rulemaking activities concerning vehicle rollovers, established a vehicle rollover resistance rating system, and is currently examining dynamic testing procedures, these programs do not extend to 15-passenger vans.

4. Given the rollover propensity of 15-passenger vans, technological systems such as traction control, lane departure systems, and particularly electronic stability control systems may have potential to assist drivers in maintaining control of these vehicles.

Recommendations

As a result of this safety report, the National Transportation Safety Board made the following safety recommendations:

To the National Highway Traffic Safety Administration

Include 15-passenger vans in the National Highway Traffic Safety Administration dynamic testing program. The dynamic testing should test the performance of 15-passenger vans under various load conditions. (H-02-26)

Extend the National Car Assessment Program (NCAP) rollover resistance program to 15-passenger vans, especially for various load conditions, and use the dynamic testing results of 15-passenger vans, as described in Safety Recommendation H-02-26, to supplement the static measures of stability in the NCAP rollover resistance program. (H-02-27)

Evaluate, in conjunction with the manufacturers of 15-passenger vans, and test as appropriate, the potential of technological systems, particularly electronic stability control systems, to assist drivers in maintaining control of 15-passenger vans. (H-02-28)

To the manufacturers of 15-passenger vans

Evaluate, in conjunction with the National Highway Traffic Safety Administration, and test as appropriate, the potential of technological systems, particularly electronic stability control systems, to assist drivers in maintaining control of 15-passenger vans. (H-02-29)

By the National Transportation Safety Board

Carol J. Carmody
Acting Chairman

John A. Hammerschmidt
Member

John Goglia
Member

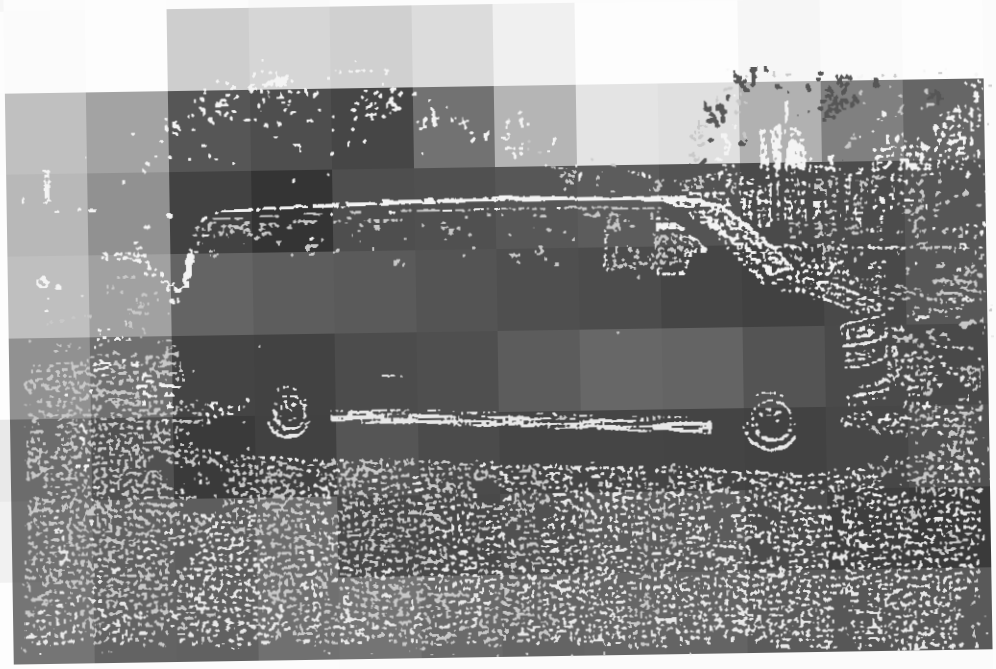
George W. Black, Jr.
Member

Adopted October 15, 2002

DOT HS 809 735
May 2004

Technical Report

Analysis of Crashes nvolvin 15- ssenger Vans



U.S. Departme of Transportatio
National Highway Traffic Safety Administration

NCSA National Center for Statistics & Analysis

NHTSA People Saving People www.nhtsa.dot.gov

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599

Technical Report Documentation Page

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7. Author(s): Rajesh Subramanian	8. Performing Organization Report No.
9. Performing Organization Name and Address: Mathematical Analysis Division, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, U.S. Department of Transportation, NRD-31, 400 Seventh Street, S.W., Washington, D.C. 20590	10 Work Unit No (TRAIS)
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12. Sponsoring Agency Name and Address: Mathematical Analysis Division, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, U.S. Department of Transportation, NRD-31, 400 Seventh Street, S.W., Washington, D.C. 20590	13 Type of Report and Period Covered: NHTSA Technical Report
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15. Supplementary Notes

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Abstract

This study explores the relationship between vehicle occupancy and several other variables in the National Highway Traffic Safety Administration's (NHTSA) Fatality Analysis Reporting System (FARS) database and a 15-passenger van's risk of rollover. A univariate analysis is used to demonstrate the effect of selected variables on single-vehicle rollover crashes. Variables used include speed, number of occupants, driver experience and avoidance maneuvers. Also, a logistic regression model is constructed using data from NHTSA's State Data System – a collection of all police reported crashes for that state. The resulting model permits jointly estimating the effect of these variables on the odds and rate of rollover occurrence, conditional on bei g in a single-vehicle police-reported crash

17 Key Words	18 Distribution Statement
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Table of Contents

Executive Summary

The National Highway Traffic Safety Administration's (NHTSA) National Center for Statistics and Analysis (NCSA), along with NHTSA's Vehicle Research and Test Center (VRTC), released a Research Note titled "*Rollover Propensity of 15-Passenger Vans*" in April 2001. This report combined crash data and engineering analysis to conclude that the rollover risk of 15-passenger vans increases with loading (Garrott, et al. [1]).

This Technical Report provides an in-depth analysis of crashes involving 15-passenger vans to assess the effect of occupancy level on the risk of rollover. The report is organized into two major sections, the first of which provides statistics on fatal crashes involving 15-passenger vans from 1990 to 2002 using data from NHTSA's Fatality Analysis Reporting System (FARS). The statistics in this section are for descriptive purposes only and should not be used to interpret propensity or risk of rollover in 15-passenger vans. The second section constructs a logistic regression model to model the effect of various factors, most importantly occupancy level, on the risk of rollover. The model is constructed using data from 1994 to 2001 on police-reported motor vehicle traffic crashes in Florida, Maryland, Pennsylvania, North Carolina and Utah that are part of NHTSA's State Data System (SDS). The data represent the entire cross-section of police-reported crashes and are hence more representative of the real-world experience of these vehicles.

Data from fatal crashes show that between 1990 and 2002, there were 1,576 15-passenger vans involved in fatal crashes that resulted in 1,111 fatalities to occupants of such vans. Of these, 657 vans were in fatal, single vehicle crashes, of which 349 rolled over. In 450 of these vans, there was at least one fatality, totaling up to 684 occupant fatalities in single-vehicle crashes.

A large proportion of the fatally injured van occupants were not wearing seat belts. Only 14 percent of the fatally injured occupants were properly restrained. Also, 92 percent of the belted occupants survived. About 61 percent of the occupants killed in single-vehicle crashes were ejected from the van. Proper restraining greatly reduces the chances of ejection from the van. The rate of ejection for unrestrained occupants is about 72 percent as compared to 18 percent for restrained occupants.

Single vehicle crashes are used as an exposure measure to assess the risk of rollover, as every single-vehicle crash is an opportunity for a rollover to occur. In single-vehicle crashes, the vehicle characteristics that contribute to rollover are not obscured by the effect of the forces of collision. Also, a majority of rollovers occur in single-vehicle crashes.

Analysis of data from NHTSA's State Data System reveals that the rate of rollover observed for 15-passenger vans that are loaded above half their designed seating capacity is 2.2 times the rate observed for vans loaded to or below half their capacity. This disparity is the widest among all vehicle categories. A large proportion of these high-occupancy rollovers are observed to take place on high-speed roads. However, a comparison of rates of rollover, conditional on being on a high speed road, between the two loading scenarios still show the widest disparity for 15-passenger vans.

Logistic Regression modeling of NHTSA's State data reveals that the risk of rollover in a single-vehicle crash, measured in terms of predicted odds, of vehicles loaded to their designed capacity is most elevated in the case of 15-passenger vans as compared to passenger cars, SUVs, minivans and pickup trucks. Odds are a statistical transformation of probability that is widely used to compare the chances of occurrence versus

non-occurrence. This metric, directly related to parameters in the logistic regression model, neatly fits into the exercise of assessing the risk of occurrence versus non-occurrence of rollover of vehicles involved in crashes.

The odds of a rollover for a 15-passenger van at its designed seating capacity, is more than five times the odds of a rollover when the driver is the only occupant in the van. This compares to ratios of close to two for SUVs and Minivans, 1.6 for pickup trucks and 1.2 for passenger cars. This disparity in the risk of rollover between lightly loaded and fully loaded scenarios is the most significant conclusion in this report.

Speed and curved road geometry were determined to be statistically significant factors affecting rollover outcome. The odds of a rollover in high-speed roads (50+ mph) are about five times the odds in a low-speed road (Under 50 mph). The odds of a rollover on curved roads increase by two times as compared to straight roads.

High occupancy single-vehicle crashes involving 15-passenger vans are significantly fewer in number as compared to other types of vehicles. While noting the disparity in sample size and comparable overall risk of rollover, it is important to observe that there is a wider disparity in the risk of rollover between nominal and full occupancy scenarios in 15-passenger vans as compared to Passenger Cars, SUVs, Pickup Trucks or Minivans.

The conclusions in this report merely point to a higher observed rate of rollover under certain vehicle, driver and crash-related factors. The conclusions should not be misconstrued to be indicative of a specific vehicle defect or a driver-related problem.

1. Introduction

Prior Research (Garrott, et al. [1]) has shown that fully loaded 15-passenger vans are observed to have a higher rate of rollover as compared to lightly loaded vans NHTSA's consumer advisory of April, 2001 was based on this research. Also, NHTSA re-issued its Consumer Advisory on the rollover propensity of these vans in April, 2002. Fifteen-passenger vans[1] are primarily used by organizations for the transportation of groups such as college sports teams, commuters, church groups, recreational groups and inmates of correctional facilities

Fifteen-passenger vans differ from most light-trucks in that they have a larger payload capacity and the occupants sit fairly high up in the vehicle (Garrott, et. al. [1]). Loading these vans to their Gross Vehicle Weight Rating (GVWR) has an adverse effect on the rollover propensity due to the increase in center-of-gravity height. Loading the vans with passengers and cargo also moves the center of gravity rearward, increasing the vertical load on the rear tires.

This report is organized into two sections. The first section uses data from NHTSA's Fatality Analysis Reporting System (FARS). This section contains raw cross tabulations of the data to identify the circumstances surrounding fatal crashes involving these vans during the thirteen years from 1990 to 2002. FARS data also shows that the rate of safety belt use among occupants of 15-Passenger vans involved in fatal crashes. The use of safety belts in a rollover scenario can be a significant factor in preventing serious injury to the occupants of these vans and also prevent them from being ejected from the vehicle. It is known that fatality rates among non-ejected occupants are dramatically lower compared with the ejected occupants in the same crash (Winnicki, J. [2]).

The second section constructs logistic regression models using NHTSA's State Data System (SDS) to correlate the risk of rollover with factors related to the environment, vehicle and driver. The state data system is a database of all police-reported crashes (fatal, injury or property-damage-only crashes) in a state. Of particular interest are rollovers in single-vehicle crashes involving such vans. Single vehicle crashes are used as an exposure measure to assess the risk of rollover, as every single-vehicle crash is an opportunity for a rollover to occur In single-vehicle crashes, the vehicle characteristics that contribute to rollover are not obscured by the effect of the forces of collision. Also, a majority of rollovers occur in single-vehicle crashes. The correlation between the loading condition (occupancy) and rollover is also presented to illustrate the adverse effect of loading on the rollover propensity of these vans.

The conclusions in this report merely point to a higher observed rate of rollover under certain vehicle, driver and crash-related factors. The conclusions should not be misconstrued to be indicative of a specific vehicle defect or a driver-related probl m

[1] While these vehicles actually have seating positions for a driver plus fourteen passengers, they are typically called 15-passenger vans Also, these vehicles are actually classified as buses under 49 CFR 571.3

1.1 Vehicle Models and Exposure

Only DaimlerChrysler, Ford and General Motors manufacture vans that can be configured to seat 15 passengers. The series of vans used for this study are

Ford E-350 Super Duty XLT (Econoline and Club Wagons)

- Dodge Ram Van B3500/Wagon B350 (1 ton) – Discontinued in 2002
- GMC Savanna Rally 1-ton Extended

Chevrolet Express 1 ton Extended

The vehicles of interest were identified in FARS and SDS using the Vehicle Identification Numbers (VINs) Although the first eleven digits of the VIN are reported in FARS, only the first seven digits of the VIN are needed to identify these vans. Although the SDS consists of data reported by seventeen states, only those states that report the VIN in their databases were included in logistic regression portion of this study. The VIN pattern and the SAS® code used to identify these vans in NCSA's FARS and SDRS database are documented in the Appendices A and B, respectively, of this report. Vehicles from all model years were included in the study.

The vans identified for inclusion in this study are the extended versions, where identifiable, of their series. Only the extended versions of the series can be configured to carry 15 passengers. However, it is conceivable that some unknown number of these vehicles left the manufacturer with seating for fewer than 15 persons, as the seating configuration/capacity is not reported in FARS, and also cannot be deciphered from the VIN. Also, there is flexibility to alter the seating capacity in such vans post-production for the purpose of carrying cargo, etc.

Figure 1 shows the number of 15-passenger vans that were registered in the U.S. as of July 1 of each year. The chart shows more than a three-fold increase in the estimated number of 15-passenger vans from 1990 to 2002. According to the figures available to NHTSA as of July 1, 2002, about 500,000 15-passenger vans were registered in the U.S. This constitutes 0.25 percent of the passenger vehicle fleet (Passenger Cars, Light trucks and Vans) in the U.S. in 2002

Figure 1: Registered 15-Passenger Vans in the U.S., 1990-2002*

Source: R.L. P ik & Co., National Vehicle Population Profile (NVPP) July 1 Census, 1990-2002

2. 15-Passenger Vans Involved in Fatal Crashes, 1990-2002

Data from NHTSA s Fatality Analysis Reporting System (FARS) is used in this section to present raw cross tabulations in order to identify the circumstances surrounding fatal crashes involving these vans during the twelve years from 1990 to 2002. It is important to note that fatal crash data provided in this section should not be used to interpret rollover propensity of vehicles, as the interpretation would be based on a small domain of crashes. Fatalities are a subsequent event to rollover causation where the crashworthiness of the vehicles and other factors like the use of restraints play a role in the severity of injuries.

2.1 Vehicles Involved and Fatalities

Vehicles Involved

In the period between 1990 and 2002, a total of 1,576 15-passenger vans were involved in fatal crashes resulting in 1,111 fatalities to occupants of such vans. Figure 2 shows the trend of the number of vans involved in fatal crashes.

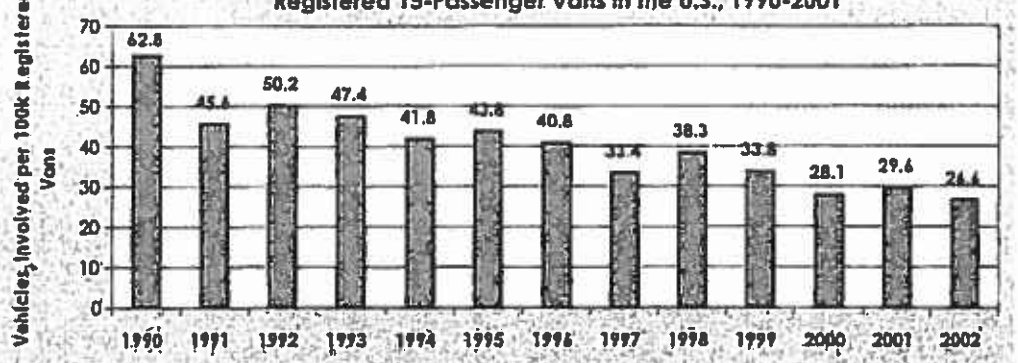
Figure 2: 15-Passenger Vans Involved in Fatal Crashes , 1990-2002

Source: NCSA. FARS 1990-2001 (Final), 2002 ARF) Data

Vehicle Involvement Rate

Figure 3 presents the vehicle involvement rate in fatal crashes per 100,000 registered 15-passenger vans.

Figure 3: Vehicle Involvement Rate in Fatal Crashes per 100,000 Registered 15-Passenger Vans in the U.S., 1990-2001



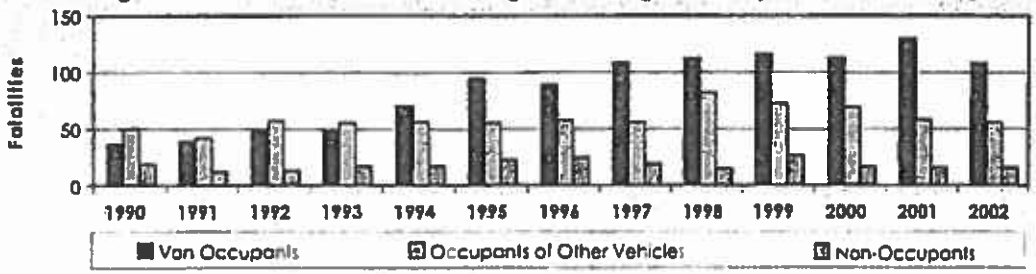
Source: R.L. Polk & Co., National Vehicle Population Profile (NVPP), 1990-2002 and NCSA, NHTSA, FARS 1990-2001 (Final), 2002 (ARF) Data

In the period from 1990 to 2002, the vehicle involvement rate per 100,000 registered vans decreased from 62.8 in 1990 to an all time low of 26.6 in 2002.

Fatalities

In crashes involving the 1,576 15-passenger vans between 1990 and 2002, fatalities occurred to occupants of 15-passenger vans, occupants of other vehicles that were also involved in the crash as well as nonoccupants (pedestrians and pedalcyclists). Figure 4 illustrates the trend of fatalities by the role of the persons killed in the crash.

Figure 4: Fatalities in Crashes Involving 15-Passenger Vans by Person Role, 1990-2002



Source: NCSA, FARS 1990-2001 (Final), 2002 (ARF)

Table1 - Fatalities in Crashes Involving 15-Passenger Vans by Person Role, 1990-2002

Year	Van Occupants	Occupants of Other Vehicles	Non-Occupants	Total
1990	37 (35%)	50 (47%)	19 (18%)	106 (100%)
1991	39 (42%)	42 (45%)	12 (13%)	93 (100%)
1992	48 (41%)	57 (48%)	13 (11%)	118 (100%)
1993	48 (40%)	55 (46%)	17 (14%)	120 (100%)
1994	70 (49%)	56 (39%)	17 (12%)	143 (100%)
1995	94 (55%)	55 (32%)	23 (13%)	172 (100%)
1996	89 (52%)	58 (34%)	25 (15%)	172 (100%)
1997	108 (59%)	56 (31%)	19 (10%)	183 (100%)
1998	112 (54%)	82 (39%)	15 (7%)	209 (100%)
1999	116 (54%)	72 (33%)	27 (13%)	215 (100%)
2000	112 (57%)	69 (35%)	17 (9%)	198 (100%)
2001	130 (64%)	58 (28%)	16 (8%)	204 (100%)
2002	108 (60%)	56 (31%)	16 (9%)	180 (100%)
Total	1,111 (53%)	766 (36%)	236 (11%)	2,113 (100%)

Source: NCSA, FARS 1990-2001 (Final), 2002 (ARF)

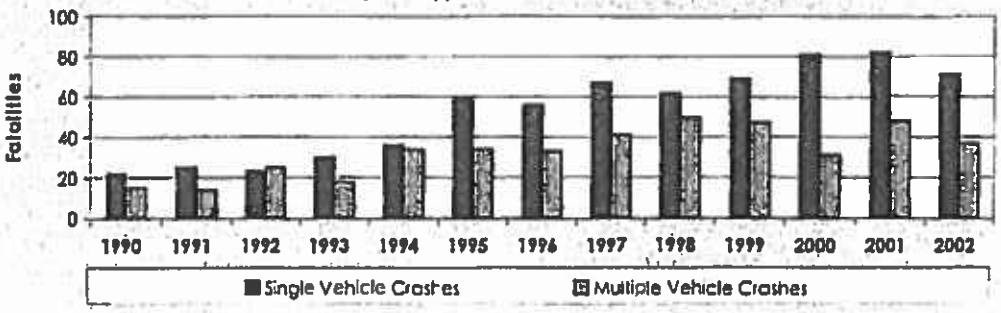
Table 1 depicts the data underlying Figure 4.

As seen in Figure 4 and Table 1, about two-thirds of all fatalities in crashes involving 15-passenger vans in 2002 occurred to the occupants of the vans themselves. This proportion has increased from a low of 35 percent in 1990 to a high of 64 percent in 2001

15-Passenger Van Occupant Fatalities by Crash Type

Figure 5 breaks down occupant fatalities by the type of the crash, i.e., if the 15-passenger van was involved in a single-vehicle or multiple-vehicle crash.

Figure 5: Occupant Fatalities in 15-Passenger Vans by the Type of Crash, 1990-2002



Source: NCSA, FARS 1990-2001 (Final), 2002 (ARF) Data

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Table 2 depicts the data underlying Figure 5.

Table 2 - 15-Passenger Vans Involved in Fatal Crashes and Occupant Fatalities by Crash Type, 1990-2002

Year	Single-Vehicle*		Multiple-Vehicle		All Crashes	
	Vehicles	Fatalities	Vehicles	Fatalities	Vehicles	Fatalities
1990	32	22	58	15	90	37
1991	29	25	44	14	73	39
1992	31	23	62	25	93	48
1993	38	30	65	18	103	48
1994	42	36	68	34	110	70
1995	58	60	70	34	128	94
1996	64	56	69	33	133	89
1997	56	67	71	41	127	108
1998	59	62	99	50	158	112
1999	63	69	87	47	150	116
2000	60	81	71	31	131	112
2001	69	82	78	48	147	130
2002	56	71	77	37	133	108
Total	657	684	919	427	1,576	1,111

Source: NCSA, NHTSA, FARS 1990-2001 (Final), 2002 (ARF) Files

*Some years have more vehicles than occupant fatalities as there are crashes with no 15-passenger van occupant fatality but a pedestrian or pedal-cyclist died in the crash.

As seen in Table 2, about 62 percent (684/1,111) of fatalities to occupants of 15-passenger vans occur in single-vehicle crashes, i.e., the vans were the only vehicles involved in the crash, although there might have been pedestrians or pedal-cyclists involved in the crash. Some of the events that could result in single vehicle crashes are when the van hits a guardrail/tree or rolls over or a combination of the two. Table 3 depicts the distribution of the number of fatalities in the 1,576 vehicles involved in fatal crashes. It can be inferred from the data in Table 3 that there were 722 (1,576-854 [Table 3]) 15-passenger vans that had at least one fatally injured occupant.

Of these 722 vehicles, 450 (657-207 [Table 3]) were involved in single-vehicle crashes accounting for 684 fatalities to occupants of those vans.

Table 3 - 15-P Vans in Fatal Crashes By Number of Fatally Injured Occupants in Van 1990-2002

Fatalities in Vehicle	Number of Vehicles	
	All Crashes	Single-Vehicle Crashes
None	854	207
1	521	319
2	121	81
3	41	33
4	10	4
5	13	5
6	5	1
7	7	5
8	2	1
11	1	0
14	1	1
TOTAL	1,576	657

Table 4 shows the occurrence of rollover in fatal crashes and the number of van occupants that were killed in these crashes between 1990 and 2002. The rollovers shown in this table consist of all crashes for which rollover was a first or subsequent event. Rollover as a first event is coded in those crashes where the First Harmful Event in the crash was a rollover. Rollover as a subsequent event is coded in those crashes where the vehicle rolled over after an initiating first harmful event (e.g., collision with a guard-rail etc or collision with another vehicle, etc.).

Table 4 -15-Passenger Vans Involved and Occupant Fatalities by Rollover Occurrence, 1990-2002

Year	Rollovers		No Rollovers		All Crashes	
	Vehicles	Fatalities	Vehicles	Fatalities	Vehicles	Fatalities
1990	21	23	69	14	90	37
1991	20	28	53	11	73	39
1992	25	21	68	27	93	48
1993	22	27	81	21	103	48
1994	29	42	81	28	110	70
1995	41	64	87	30	128	94
1996	41	52	92	37	133	89
1997	42	69	85	39	127	108
1998	53	71	105	41	158	112
1999	45	76	105	40	150	116
2000	55	91	76	21	131	112
2001	66	91	81	39	145	130
2002	50	70	83	38	133	108
Total	510	725	1,066	386	1,576	1,111

Source: NCSA, NHTSA, FARS 1990-2001 (Final), 2002 (ARF) Files

About two-thirds (725/1,111) of the fatalities to occupants of 15-passenger vans occurred when the vans rolled over. Table 5 shows the vehicles involved and the fatalities to occupants of these vehicles that rolled over (725 fatalities – Table 3) by the type of the crash.

Table 5 - 15-Passenger Vans that Rolled Over and Subsequent Fatalities by Type of Crash, 1990-2002

1990	12	17	9	6	21	23
199	15	20	5	8	20	28
1	15	16	10	5	25	21
1993	18	24	4	3	22	27
19 4	19	25	10	17	29	42
199	29	49	12	15	41	64
199	31	42	10	10	41	52
1	28	55	14	14	42	69
1998	35	49	18	22	53	71
	31	60	14	16	45	76
	39	72	16	19	55	91
	44	70	22	21	66	91
	33	57	17	3	50	70

Source: NCSA, NHTSA, FARS 1990-2001 (Final), 2002 (ARF) Files

More than three-quarters (556/725) of all fatalities that occurred in rollover crashes between 1990 and 2002 were in vans involved in single-vehicle crashes. Single vehicle crashes are used as an exposure measure to assess the risk of rollover, as every single-vehicle crash is an opportunity for a rollover to occur. In single-vehicle crashes, the vehicle characteristics that contribute to rollover are not obscured by the effect of the forces of collision. Also, a majority of rollovers occur in single-vehicle crashes.

Table 6 shows the proportion of crashes when the van rolled over by the type of the crash. In 2002, 15-passenger vans involved in fatal single-vehicle crashes were more than twice as likely to have rolled over as compared to those vans that were involved in multiple-vehicle crashes. Also, about 53 percent of the 15-passenger vans involved in fatal, single-vehicle crashes rolled over. This proportion has increased from a low of 38 percent in 1990 to a high of 65 percent in 2000 and has decreased to 59 percent in 2002.

Table 6 - Proportion of 15-Passenger Vans Rollovers by Type of the Crash 1990-2002

Year	Single-Vehicle Crashes			Multiple-Vehicle Crashes			All Crashes		
	hes	Rollovers		Crashes	Rollovers		Crashes	Rollovers	
1990	32	12	38%	58	9	16%	90	21	23%
1991	29	15	52%	44	5	11%	73	20	27%
1992	31	15	48%	62	10	16%	93	25	27%
1993	38	18	47%	65	4	6%	103	22	21%
1994	42	19	45%	68	10	15%	110	29	26%
1995	58	29	50%	70	12	17%	128	41	32%
1996	64	31	48%	69	10	14%	133	41	31%
1997	56	28	50%	71	14	20%	127	42	33%
1998	59	35	59%	99	18	18%	158	53	34%
1999	63	31	49%	87	14	16%	150	45	30%
2000	80	39	65%	71	16	23%	131	55	42%
2001	69	44	64%	78	22	28%	147	66	46%
2002	56	33	59%	77	17	22%	133	50	38%
Total	657	349	53%	919	161	18%	1,576	510	32%

Source: NCSA, NHTSA, FARS 1990-2001 (Final), 2002 (ARF) Files

In the period from 1990 to 2002 about 68 percent (349/510) of all rollovers involving these vans occurred in single-vehicle crashes. Driver-related factors and vehicle dynamics (non-driver related factors) along with the influence of environmental factors can be contributing factors in a single-vehicle crash resulting in a rollover. There were 657 such crashes from 1990 to 2002 resulting in 556 fatalities of occupants of 15-passenger vans.

2.2 Restraint Use Among Occupants of 15-Passenger Vans

Fifteen-passenger vans are equipped with a safety belt (lap or lap-shoulder belt) in every seating position (driver and 14 passengers). A total of 684 occupants of 15-passenger vans were killed in a single-vehicle crash. Table 7 depicts the extent of restraint use among fatally injured occupants of 15-passenger vans in single-vehicle crashes.

As shown in Table 7, 75.6 percent of the occupants killed in fatal single-vehicle crashes were not restrained, i.e., they were not wearing safety-belts or not properly restrained in child-safety seats, etc. The chance of a serious injury is higher when an occupant is not restrained, among other things, the chances of being ejected out of the vehicle increases. Fatality rates among non-ejected occupants are dramatically lower compared with the ejected occupants in the same crash (Winnicki, J. [2]).

Table 7 - Restraint Use Among Fatally Injured Occupants of 15-Passenger Vans in Fatal, Single-Vehicle Crashes 1990-2002

Restraint Use	Number	Percent
Unrestrained	517	75.6
Restrained	95	13.9
Unknown	72	10.5
Total	684	100.0

Source: NCSA, NHTSA, FARS 1990-2001 (Final), 2002 (ARF) Files

Table 8 - Ejection and Restraint Use Among Fatally Injured Occupants of 15-Passenger Vans in Fatal, Single-Vehicle Crashes, 1990-2002

Restraint Use	Ejection			
	Ejected	Not Ejected	Unknown	Total
Restrained	17	78	0	95
Unrestrained	371	134	12	517
Unknown	26	41	5	72
Total	414	253	17	684

Source: NCSA, NHTSA, FARS 1990-2001 (Final), 2002 (ARF) Files

As shown in Table 8, about 72 percent (371/517) of the fatally injured, unrestrained occupants of 15-passenger vans in single vehicle crashes were ejected (partially or totally) from the van.

As seen in Table 9, an unrestrained occupant in a fatal, single vehicle crash involving a 15-passenger van is about three times as likely to have been killed as compared to a restrained occupant (22 percent versus 8 percent). The lack of data did not permit a more reasonable metric that would have been based the restraint usage rate among occupants in all crashes and the ensuing severity of injuries.

Table 9 - Injury Severity by Restraint Use Among Occupants of 15-Passenger Vans in Fatal Single-Vehicle Crashes, 1990-2002

Restraint Use	Killed	Survived	Total	p-value
Unrestrained	517 (22%)	1,816 (78%)	[illegible]	<0.0001
Restrained	95 (8%)	1,055 (92%)	[illegible]	<0.0001
Unknown	72 (88%)	420 (12%)	[illegible]	-
Total	684 (17%)	3,291 (83%)	3,975 (100%)	-

Source: NCSA, NHTSA, FARS 1990-2001 (Final), 2002 (ARF) Files

Table 10 - Restraint Use Among Fatally Injured Occupants in Single Vehicle Crashes by Vehicle Type 2002

Vehicle Type	Restrained	Unrestrained	Unknown
Passenger Cars	30	62	8
SUVs	25	70	5
Pickup Trucks	18	76	6
Vans	26	65	9
15-Passenger Vans	14	76	11

Source: NCSA, NHTSA, FARS 2002 (ARF) Files

Table 10 depicts the proportion of fatally injured occupants, in 2002, that were unrestrained by the type of vehicle that they were driving/riding in. Fatally injured occupants of 15-passenger vans and Pickup Trucks have the lowest rate of restraint use as compared to occupants of passenger cars, SUVs, and Vans.

2.3 Comparison with Other Vehicle Types Involved in Fatal Crashes

Table 11 depicts the rate of fatal, single vehicle crashes per 100,000 registered vehicles by vehicle type from 1995 to 2002 [only back to 1995 as reliable registration data exists only back to that year]. As shown in Table 6, the number of 15-passenger vans involved in fatal, single vehicle crashes per 100,000 registered vans has been decreasing since 1995, but is still higher than other categories of passenger vehicles like cars, SUVs, other vans, etc. The higher rate of fatal, single-vehicle crashes is also due to the fact that the occupancy levels in these vans are larger than those in the smaller passenger vehicles and this in turn results in a higher probability of at least one occupant fatality in the van.

Table 11 - Number of Fatal, Single-Vehicle Crashes per 100,000 Registered Vehicles 1995-20

	9.6	9.3	8.9	8.6	8.2	8.1	8.0
	14.3	14.1	13.6	13.3	13.0	12.7	11.8
	13.0	12.3	11.8	11.8	11.7	11.3	11.4
	19.8	19.6	14.7	14.3	14.2	12.9	13.9
	7.3	7.4	7.5	7.7	7.4	7.2	6.5

Source: NCSA, NHTSA FARS 1990-2001 (Final), 2002 (ARF) files, R.L.Polk and Company NVPP Registration Data

3. Analysis Using Crash Data from NHTSA's State Data System (SDS)

The descriptive statistics in the previous section were based on data on fatal crashes, i.e., crashes that resulted in at least one fatally injured person. This section presents a detailed analysis of crash data from five states that are part of NHTSA's State Data System (SDS). The data are a census of all police-reported crashes in that state comprising of serious crashes (those resulting in a fatality or injury) as well as those that only resulted in damage to property. Consequently, the data are representative of the population of police-reported crashes in these states for those years.

3.1 Data and Methodology

NHTSA's state data system consists of crash data from seventeen participating states. However, not all states report the Vehicle Identification Number (VIN) that is necessary to identify 15-passenger vans. The five states that report VINs were chosen for this study. Data, spanning multiple years from these states, were included in this analysis. Table 12 depicts the states chosen and the years of data included. In order to identify vehicle types (e.g., passenger cars, SUVs, 15 passenger v ns, etc.), the VIN was decoded o extract vehicle model codes These codes are stored as pa t of a supplemental analytic file in the SDS The model year of the vehicle is also derived in this manner. Other variables of interest were all re-coded into a uniform variable for analysis. These variables included rollover occurrence, occupancy[1], age of the driver, driver impairment, weather conditions, roadway surface conditions, speed-limit (as a proxy for travel speed). The variables and data chosen are along the lines of those chosen for NHTSA's Rollover Assessment Program that generates star-ratings for rollover risk of passenger vehicles. Of particular interest are single vehicle crashes involving these vehicles. Single vehicle crashes are used as an exposure measure to assess the risk of rollover, as every single-vehicle crash is an opportunity for a rollover to occur In single-vehicle crashes, the vehicle characteristics that contribute to rollover are not obscured by the effect of the forces of collision. Also, a majority of rollovers occur in single-vehicle crashes.

Table 12 - States and Years of Data Chosen for Analysis

[illegible]	1994 to 2001
[illegible]	1994 to 2001
North C[illegible]	1994 to 1999
Pen[illegible]	1994 to 2000
Utah	1994 to 2001

Source: NHTSA State Data Reporting System (SDRS)

The results from the analysis of the state data are presented in two parts – a descriptive part outlining summary crash data by vehicle type containing rollover and crash ratios and an analytic part containing the results of a logistic regression model to predict rollover as an outcome conditional on given vehicle, driver and environmental characteristics.

[1] Occupancy is derived by adding up the number of occupants in the person level file All states chosen for this analysis report all persons, injured or uninjured, involved in the crash For this reason, the Missouri data, while fulfilling other requirements, was dropped from this analysis as not all uninjured persons are reported in the data

3.2 Descriptive Statistics

The data in this section will describe the occurrence of crashes and rollovers by vehicle type. The major vehicle categories chosen for analysis are

- Sport Utility Vehicles (SUVs)
- Pickup Trucks (Pickups)
- Minivans
- Passenger Cars
- 15-Passenger Vans
- Other Vans
- Others/Unknown

The metric that will be used in this section, for a given crash type, is the ratio of vehicles that rolled over to number of vehicles involved in a given type of crash. This metric will be used to compare the 15-passenger van's 'propensity' to rollover as compared to that for other vehicles. At this stage, it is important to highlight the differences between the handling characteristics of a vehicle and its resistance to rollover. Some vehicle characteristics, such as handling problems, may result in a relatively high frequency of single vehicle crashes. The vehicle's rollover resistance can then be assessed by whether a single vehicle crash results in a rollover. The vehicle's rollover resistance is measured by the propensity of the vehicle to roll over, conditional on a single vehicle crash having occurred.

Table 13 presents the overall picture on the number of crashes by vehicle type as reported to the six states used in this analysis.

Single-vehicle crashes, expressed as a percentage of all crashes, have low rates of incidence for 15-passenger vans as compared to other vehicle types. About 9 percent of all crashes involving 15-passenger vans were single vehicle crashes. The incidence of single-vehicle crashes as a proportion of all crashes was the lowest for Minivans (8 percent) and highest for SUVs (14 percent). So overall, it seems that 15-passenger vans do not have any unusual handling issues, which would have manifested itself in a higher incidence of single vehicle crashes, as compared to the other types of vehicles. Also, there may be various driver characteristics, including some not reported/measured, may contribute to a relatively higher incidence of single-vehicle crashes. Making the analysis of rollovers conditional on being in a single-vehicle crash also captures these factors.

Table 13 Vehicles Involved in Crashes by Crash Type and Type of Vehicle

S	15,622	1,441	9.22%	14,181	90.78%
Pass	3,625,467	423,760	11.69%	3,201,707	88.31%
s	440,917	61,968	14.05%	378,949	85.95%
Pickup Trucks	752,814	98,282	13.06%	654,532	86. 4%
	202,429	16,205	8.01%	186,224	91.99%
VS	170,105	15,745	9.26%	154,360	90.74%
OTH	615,555	71,855	11.67%	543,700	88.33%

Source: NHTSA State Data Reporting System (SDRS) FL, MD, NC, PA and UT data

Table 14 depicts the incidence of rollover by vehicle type and type of crash (single or multiple vehicle). Single vehicle crashes are the preferred domain of analysis as the vehicle dynamics are more likely to have played a part in rollover causation as compared to multiple vehicle crashes, where the impact dynamics can also play a role

Overall, the incidence of rollover in single vehicle crashes for 15-passenger vans, expressed, as a percentage of vehicles involved in such crashes, is comparable with those for other types of vehicles SUVs had the highest incidence (39 percent) among all the vehicle categories while passenger cars had the lowest incidence rates (16 percent). However, the issue at hand is to analyze the rate of rollover at various occupancies for the different vehicle types Prior research (Garrott, et. al) has indicated that the rate of rollover for 15-passenger vans increases three-fold when the vans have 10 occupants or more as compared to those that have fewer than 10 occupants.

Table 4 s s and Rollovers by Cr es ype a Type of Vehicle

Vehicle Type					Vehicle Crashes		All Crashes		
					Rollovers	%	Crashes	Rollovers	%
U.S. Vans	[illegible]	375	22	14,181	172	1	15,622	487	3
Passenger Cars	428,748	66,318	16	3,201,707	24,320	1	3,625,467	70,638	3
SUVs	61,948	23,		378, 49	9,625	3	440,917	33,552	8
Pickup Trucks	98,282	26,187	27		9,936	2	752,814	36,123	5
Minivans	16,205	2,746	17	4	2,389	1	202,429	5,135	3
Other Vans	15,745	3 2	23	154,360	2,476	2	170,105	6,068	4
Other/Unknown	71,855	14,491	-	543,700	7,943	-	615,555	22,434	-
Total	689,25				56,861		5,822,909	194,437	3

Source: NHTSA State Data Reporting System (SDRS) F MD. NC PA and UT data

Fully loaded conditions for the various vehicle categories are shown in Table 15. It is entirely conceivable that some individual models within a vehicle category might have a higher seating capacity than the one indicated in Table 15. Figure 6 depicts the rate of rollover in single vehicle crashes for the different vehicle types by occupancy. It is to be noted that in the chart, occupancy of 4 for passenger cars, pickup trucks and SUVs is actually 4 or more, occupancy of 7 is actually 7 or more occupants. It is entirely conceivable that some of the vehicles may have a designed seating capacity that exceeds those shown in Table 13. It is not possible to identify the seating configuration of passenger vehicles from NHTSA's databases or VINs. Also vehicles with much larger seating capacities than those mentioned in Table 13, especially SUVs, have been late entrants to the fleet. The latest data year in this analysis was 2001 and it is reasonable to assume that the fleet was heavily weighted towards the seating capacities mentioned in Table 13.

Table 15 - Occupancies Assumed as Fully-Loaded Conditions by Type of Vehicles

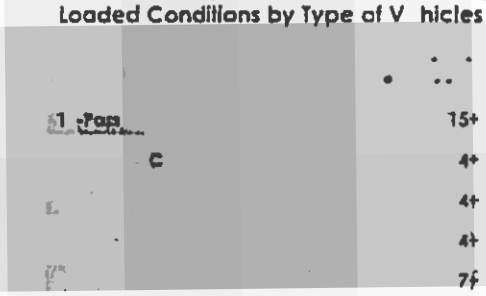
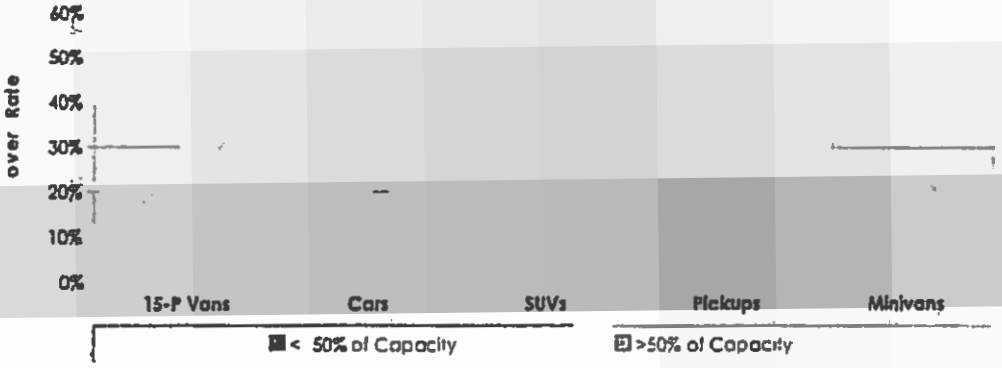


Figure 6 compares the rates of rollover for various vehicle types by when they are loaded to half or under their seating capacity versus over half their seating capacity. For the sake of this analysis, passenger cars, SUVs and pickup trucks with two occupants or less, minivans with three occupants or less and 15-passenger vans with seven occupants or less are defined as vehicles loaded to half their capacity or under

Figure 6: Rollover Rates by Vehicle Type in Single Vehicle Crashes by Occupancy



Source: NCSA, State Data Reporting System FL, MD, NC, PA and UT data.

As seen in Figure 7, when the vehicles are loaded to more than half of their seating capacity, the rates of rollover are higher as compared to when they are loaded to half their seating capacity or less. However, the relative difference in the rates of rollover under the two different loading scenarios is most pronounced for 15-passenger vans. This relative difference is shown in Table 16 for other vehicle categories. It is noted that a 15-passenger van that is loaded to half its designed seating capacity has as many occupants as any other type of passenger vehicle that is fully loaded. The differences for all vehicle categories are statistically significant, as indicated by the p-values in Table 16.

road they were traveling at the time of the crash. The percentages in each of the bars in Figure 8 indicate the proportion of the rollovers in that category that occurred on high-speed roads (50+ mph). So, 62 percent of rollovers of 15-passenger vans that loaded to half or under half of their designed capacity were in high-speed roads. In comparison, 91 percent of rollovers involving 15-passenger vans that were loaded at or above half their designed seating capacity occurred on high-speed roads.

The data in Figure 7 indicate that a great proportion of rollovers of 15-passenger vans in heavily loaded scenarios occur on high-speed

Table 16 - Rollover Rates by Occupancy and Vehicle Type n Single Vehicle Crashes

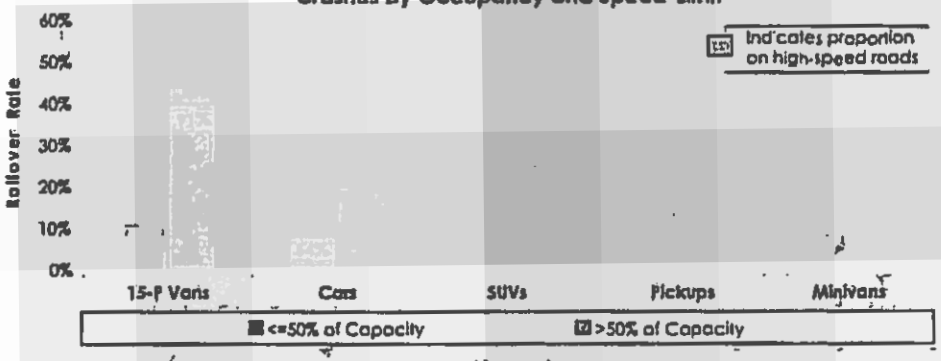
	Hal pa e Seatin or Und			
[redacted]	20%	44%	2.2	p<0.0001
[redacted]	15%	19%	1.3	p<0.0001
[redacted]	37%	50%	1.4	p<0.0001
Pickup T	26%	34%	1.3	p<0.0001
[redacted]	16%	26%	1.7	p<0.0001

NHTSA State Data Reporting System SDRS F MD, NC PA and T data.

As shown in Table 16, occupancy seems to have a pronounced effect on the rates of rollover observed in single vehicle crashes However, there are factors other than occupancy that can have an adverse effect on a vehicles propensity to roll over. These may include the speed of travel, surface and weather conditions, experience/ training of the driver and impaired driving. The speed of travel can be a significant factor in affecting rollover outcome because greater travel speed of the vehicle provides more energy to initiate rollover. Figure 7 un-confounds the effect of speed on the proportions shown i Figure 7 In the absence of reliable measures of travel speed, the posted speed limit at the scene of the crash is used as a proxy for the speed of travel. Figure 7 shows, by vehicle type, the compos tion of the rollovers by occupancy and the speed imit of the

roads, as compared to other types of vehicles. It is appropriate to examine if 15-passenger vans traveling on high-speed roads, when loaded at or above half their seating capacity, have a higher risk of rollover as compared to other types of vehicles under similar circumstances. Table 17 examines this issue by comparing the rate of rollover under various combinations of speed nd occupancy for the various types of vehicles involved in single-vehicle crashes. The terms ligh y loaded and heavily-loaded have been used loosely to define loading conditions above and below half the designed seating capacity.

Figure 7: Rollover Rates by Vehicle Type in Single Vehicle Crashes by Occupancy and Speed-Limit



Source: NCSA, State Data Reporting System FL, MD, NC, PA and UT data.

As shown in Table 17, 15-passenger vans seem to have the highest risk of rolling over under heavily loaded scenarios in high-speed roads. Under similar circumstances, SUVs have comparable risks of rollover too. It is to be noted that the sample size of crashes for 15-passenger vans is significantly smaller than those for other types of vehicles. However, the number of crashes involving 15-passenger vans in these categories is large enough to perform a statistically valid comparison with other types of vehicles. Even though the crude rate of rollover on high-speed roads under heavily loaded scenarios for 15-passenger vans is comparable with SUVs, it is much higher than the rate for other types of vehicles. It will be noteworthy to examine the relative disparity in the rates of rollover between heavily loaded and lightly loaded scenarios on high speed roads Table 18 depicts this relative risk ratio.

The disparity in the rates of rollover between

Table 17 - Rates of Rollover (Sample Size of Crashes) for Various Scenarios of Occupancy and Speed Limit for Vehicles Involved in Single Vehicle Crashes

Lightly [illegible]	11.7% [727]	11.5% [216,447]	29.8% [29,922]	19.6% [48,512]	11.1% [8,364]
Lightly Loaded+ High Speed Roads	29.6% [458]	22.2% [141,389]	49.2% [20,793]	35.8% [37,204]	25.6% [5,077]
Heavily L[illegible]ed+ Low Speed Roads	13.2% [38]	13.8% [3,038]	39.0% [3,379]	25.8% [2,918]	13.7% [619]
Heavily Loaded+ High Speed Roads	61.6% [86]	25.7% [4,897]	60.5% [3,565]	42.8% [2,673]	33.7% [1,050]

Source: NHTSA, State Data Reporting System (SDRS) FL, MD, NC, PA and UT data

light and heavy loading conditions on high-speed roads is the largest for 15-passenger vans. However, one can assess the true effect of occupancy on rollover propensity by taking into account the effect of various other factors that can affect rollover outcome. Statistically, a logistic regression model is very suitable to predict rollover as a dichotomous outcome (yes or no), based on explanatory variables. Logistic regression permits the joint estimation of the effect or significance of a variable in affecting rollover

Table 8 - Rollover Rates by Occupancy and Vehicle Type in Single Vehicle Crashes in High-Speed Roads (50+ mph)

Vehicle Type	Under	Over Half the Seat Capa	
15-Passenger Van	29.6%	[illegible]	2.08
Passenger Car	22.2%	25.7%	1.16
[illegible]	49.2%	60.5%	1.23
[illegible]	35.8%	42.8%	1.20
Universe	25.6%	33.7%	1.32

Source: NHTSA State Data Reporting System (SDRS) FL, MD, NC, PA and T data

3.3 Logistic Regression Analysis

The logit model is a regression model that is tailored to fit a dichotomous dependent variable, in this case, the occurrence or non-occurrence of rollover. The independent variables can be quantitative (e.g., number of occupants from 1 to 15+) or dichotomous (drinking/no drinking, etc.).

To appreciate the logit model, it is helpful to have an understanding of **odds** and **odds ratios**. *Probabilities* quantify the chances that an event will occur. The probability that a rollover will occur ranges from 0 to 1, with a 0 meaning that the event will almost certainly not occur, and a 1 meaning that the event will almost certainly cur. *Odds* of a rollover is the ratio of the expected number of times that an event will occur to the expected number of times it will not occur. An odds of 2 means that twice as many occurrences as non-occurrences can be expected. Similarly, an odds of ¼ means that one-fourth as many occurrences as non-occurrences are expected. So, if p is the probability of rollover and O is the odds of rollover, then:

$$O = \frac{p}{1-p} = \frac{probability\ of\ rollover}{probability\ of\ no\ rollover}$$

If the value of the odds is less than 1, the probability of rollover is below 0.5, while odds greater than 1 correspond to probabilities greater than 0.5. Like probabilities, odds have a lower bound of 0 but there is no upper bound on odds. Odds are a more sensible scale for multiplicative comparisons. For example, if vehicle 1 is observed to have a probability of rollover of 0.30 and vehicle 2 has a probability of rollover of 0.60, then it is reasonable to claim that the probability of vehicle 2 rolling over is twice as great as the probability of vehicle 1 rolling over. However, no vehicle can have twice as much probability of rolling over as vehicle 2 (probability of 0.6x2=1.2 is not possible). On the odds scale, there are no limitations on multiplicative comparisons. A probability of 0.60 corresponds to odds of 1.5. Doubling odds of 1.5 yields odds of 3 which converts back to a probability of 0.75. This leads to the concept of *odds ratios*, a widely used measure of relationship between two dichotomous variables.

It is implicit in much of the literature on categorical data analysis that odds ratios are less sensitive to changes in marginal frequencies (e.g., the total number of rollovers and non-rollovers) than other measures of association. They are generally regarded as fundamental descriptions of the relationship between the variables of interest Importantly, odds ratios are directly related to the parameters in the logit model.

The Logit Model

The binary response model for rollovers states that the probability of rollover, conditional on a single-vehicle crash having occurred, is a function of selected explanatory variables. If Y denotes the dependent variable in a binary-response model for rollovers, Y is equal to 1 if there is a rollover and 0 otherwise. The goal is to statistically estimate the probability that Y=1, considered as a function of explanatory variables. The logit model, which is a widely used binary-response model for rollover is:

$$P(Y=1|X=x)=\frac{1}{[1+e^{(\alpha+\beta x)}]}$$

This model can be rewritten, after taking the natural logarithm of both sides as:

$$Ln\left(\frac{P}{(1-P}\right)=\alpha+\beta x$$

where α is the intercept and β is the vector of coefficients and x is the vector of explanatory variables. The logistic regression analysis has been performed in two ways – independently for each vehicle type to assess the effect of various factors in predicting rollover as well as a model for the vehicle population as a whole with design variables accounting for differences between the vehicle types.

3.3.1 Logistic Regression Analysis Performed Independently for Each Type of Vehicle

The explanatory variables used to model rollover as an outcome are shown in Table 19. The model uses metrics to represent various crash and driver-related characteristics and more importantly, the number of occupants in the vehicle. That is, for each vehicle type:

Logit (Pr(Rollover)) = OCCUPANCY STORM FAST HILL CURVE BADSURF MALE YOUNG OLD DRINK DUMMYFL DUMMYMD DUMMYNC DUMMYPA DUMMYUT.

The factors used in the model mirror those used in NHTSA's National Car Assessment Program (NCAP) studies.

Table 19 - Explanatory (Independent) Variables in Logistic Regression Model

of Occupants	1 to 15+
Condition	1 if dark; 0 if not dark
Weather	1 stormy; 0 if not
Speed (Speed Limit as Proxy)	1 if 50+ mph else 0
Hilly Grades	1 yes else 0
Road Curves	1 if yes else
Adverse Roadway Surface Conditions	1 if s else 0
Male Driver	1 if yes else 0
Young Driver	1 if yes else 0
Driver Impairment	1 if yes else 0

Also included in the regression model were five variables DummyFL, DummyMD, DummyNC, DummyPA and DummyUT. The variables DUMMY<state> represent the change in Logit(Pr(Rollover)) due to the crash's taking place in that state as compared to an otherwise similar crash in Florida. They are included to control for differences in traffic patterns and reporting practices that effect rollover rates between the states. The roadway function class, i.e., if the site of the crash was a rural or urban area, was not used in the regression due to the unavailability of the data However, it may be assumed that speed limit, curve and roadway surface conditions are reasonable explanatory variables to account for the rural/urban dichotomy. For each value of occupancy, the proportion of rollovers predicted by the model is computed by summing the predicted probabilities of rollover for all of the cases with that occupancy and dividing by the number of cases with that occupancy.

Table 16 presents the results of the logit model in terms of odds-ratios and significance parameters

$$RolloverRate_{Occupancy} = \frac{\sum_{Crashes} Probabilities_{Occupancy}}{Crashes_{Occupancy}}$$

(p-values). The regression was done within each vehicle type in order to assess the effect of the various covariates on rollover outcome. Table 20 presents the odds ratios for the regression analysis on single vehicle crashes involving 15-passenger vans only

Interpretation of Odds Ratios

Odds ratios can be interpreted as tools for multiplicative comparisons with respect to a reference value. For example, an odds ratio of 5 for *fast* indicates that the odds of a rollover on a road with a high speed limit (50 mph or above) is about five times as high as that in a lower speed road (under 50 mph), conditional on being in a single vehicle crash

The joint estimation using the logistic regression

occupancy increases the odds of a rollover by close to 12 percent (from 1 to 1.120 or 12 percent), conditional on being in a single-vehicle crash.

Also, the odds of a rollover on a road with a high speed limit (FAST: 50 mph or above) is about five times as high as that in a lower speed road, conditional on being in a single vehicle crash. The odds of a rollover on a curved road (CURVE) increase by 99 percent over the odds of rolling over on a straight road.

Table 20 - Logistic Regression Predicting Rollover in Single-Vehicle Crashes, 15-Passenger Vans

		-2.1178	<0.0001
	1.120	0.1135	<0.0001
	1.200	.1821	0.29
	1.351	0.3011	0.1468
	1.022	0.6138	1
	1.	0.0836	0.6368
	1.989	0.6874	0.0001
[illegible]	0.980	-0.0207	0.9237
[illegible]	1.036	0.0349	0.8486
[illegible]	1.222	0.2005	0.2819
[illegible]	0.845	-0.1687	0.7613
[illegible]	0.811	-0.2091	0.5205

p-value for entire model: <0.0001
Source: NHTSA State Data Reporting System (SDRS FL, MD, NC, PA and UT data.

model reveals that the variables with the most significant impact on rollover outcome, as indicated by their -values, are:

Fast (high speed road)
Occupancy (number of occupants in the vehicle)
Curve (curved geometry at site)

The effect of these factors on rollover outcome is also statistically significant as indicated by the low p-values.
As seen in Table 20, each unit increase in

A comparison of the odds-ratio estimates of the three statistically significant factors (Speed, occupancy, adverse weather and road geometry) for 15-passenger vans with the corresponding odds-ratios for other vehicle types is illustrated in Table 21

As seen in Table 21, the three factors that were significant in predicting rollover of 15-passenger

vans in single vehicle crashes were also significant for other types of vehicles. For 15-Passenger vans, a unit increase in occupancy, controlling for other factors, contributes to a 12 percent (odds ratio of 1.120) increase in the predicted odds of rollover, conditional on being in a single vehicle crash. An odds-ratio of 1.12 for occupancy implies that for every unit increase in occupancy, the odds of a rollover are increased 1.12 times – an increase of 12 percent. In order to determine the effect of increasing occupancy on rollover, it is helpful to understand the multiplicative nature of odds ratios for different increments of occupancy. If O is the odds ratio for a unit occupancy, then the odds ratio for k occupants is O^k. Correspondingly, when loaded to the design capacity of 15 occupants, the odds ratio would be 5.47 [1.12^{15}]. Correspondingly, when passenger cars are loaded to their capacity, the odds ratio increases to 1.27 (1.061^4), or, just a 27 percent increase. Table 22 depicts these comparisons by vehicle type. The odds ratio at the designed seating capacity show the most pronounced effect for 15-passenger vans followed by Minivans, SUVs, Pickup Trucks and Passenger Cars.

able 21 - Odds-Ratio Estimates of Occupancy, Road Curvature and Speed in Logit Model Predicting Rollover in Single-Vehicle Crashes, by Vehicle Type

	Occupancy	1.120	
P n	Fast	5.022	<0.0001
	C	1.989	0.0001
	Occupancy	1.061	<0.0001
C	Fast	2.454	<0.0001
	Curve	1.889	<0.0001
	Occupancy	1.211	<0.0001
	Fast	626	<0.000
	Curve		
	Occupancy	1.134	<0.0001
	Fast	2.669	<0.0001
	Curve	1.827	<0.0001
	Occupancy	1.123	
ns	Fast	3.213	<0.0001
	Curve	1.654	<0.0001

Source: NHTSA State Data Reporting System (SDRS) FL, MD NC, PA and T data.

Table 22 - Odds-Ratio Estimates at Full Occupancy, by Vehicle Type

15-Passenger Vans (15+)	5.47
Passenger Cars (4+)	1.27
SUVs (4+)	2.15
Pickup Trucks (4+)	1.65
Minivans (7+)	2.01

Source: Logistic Regression on FL, M N PA a d UT Data

In terms of change in the odds of rollover per unit increase in occupancy, 15-passenger vans compare on the same scale as other types of vehicles. However, the large multiplicative factor in terms of the number of occupants correspondingly predict much higher odds of rollover at designed seating capacity as compared to other types of vehicles. In fact, they have about 2.7 [5.41/2.01] times the odds ratio of rollover as

compared to minivans at full occupancy, which is about half the capacity of 15-passenger vans. Also, 15-passenger vans have an estimated odds ratio of 4.3 times [5.47/1.27] that of passenger cars and pickup trucks when loaded to the designed seating capacity. The corresponding ratio when compared with SUVs is about 2.54 [5.47/2.15].

For the sake of comparison with Minivans, at occupancy level of 7, the odds-ratio for 15-passenger vans is 2.21 [1.12^7] – pointing to a two-fold increase in the odds of rollover. Similarly, at an occupancy level of 4, the odds-ratio for 15-passenger vans is 1.57 [1.12^4] – pointing to a 57 percent increase in the odds of rollover.

3.3.2 Logistic Regression Analysis Performed for the Vehicle Population as a Whole

The explanatory variables used to model rollover as an outcome are shown in Table 23. The model uses metrics to represent various crash and driver-related characteristics and more importantly, the number of occupants in the vehicle.

Logit (Pr(Rollover)) = OCCUPANCY STORM FAST HILL CURVE BADSURF MALE YOUNG OLD DRINK DUMMYMD DUMMYNC DUMMYPA DUMMYUT D_CAR D_SUV D_PICKUP D_MINIVAN

This model will facilitate a comparison between the different vehicle types after adjusting for all other factors, including occupancy. The design variables D_CAR D_SUV D_PICKUP and D_MINIVAN will account for overall differences in the geometry and features by the type of the vehicle. It is to be noted that the design variables average out the differences that might exist within a vehicle type, for example a compact sedan versus a large passenger car. This type of analysis is meant to provide insight into differences that might exist between different vehicle types in an overall sense and should not be interpreted for individual vehicle models within a vehicle category.

Table 23 - Explanatory (Independent) Variables in Logistic R gression Model

Occ	of Occupants	1 to 15+
LD	Light Condition	1 if dark; 0 if not dark
	Stormy Weather	1 if stormy; 0 if not
F	S (Speed Limit as Proxy)	1 if 50+ mph else 0
	Hilly Gradient	1 if yes else 0
	Curves	1 if yes else 0
	Adv Roa Surface Conditions	1 if yes else 0
	Male Driver	1 if yes else 0
Young	Young Driver	1 if yes, else 0
Drink	Driver Impairment	1 if yes else 0
	Design Variable for Cars	1 is Passenger Car else 0
D_S	Design Variable for SUVs	1 is SUV else 0
P	Design Variable for Pickups	1 is Pickup else 0
AN	Design Variable for Minivans	1 is Minivan else 0

The logistic regression yields the parameter estimates and odds ratios for the various factors as shown in Table 24.

Table 24 - Logist c Regress on Predicting Rollover in Single-Vehicle Crashes All Vehicles

Interce	NA	- .8774	< 0.0001
Occ ancy	1.095	0.0905	<0.0001
Dark	0.967	-0.0335	<0.0001
	0.861	-0.1500	<0.0001
	2.605	0.9574	<0.0001
Hill	1.141	0.1319	<0.0001
Curve	1.844	0.6119	<0.0001
	0.877	-0.13 8	<0.0001
Male	0.995	-0 00534	0.4986
Young	1.344	0.2957	<0.0001
Old	0.667	-0.4056	<0.0001
Drink	1.266	0.2362	<0.0001
D_CAR	0.654	-0.4239	<0.0001
D_S	2.405	0 8777	<0.0001
D_PICKUP	1.261	0.2322	<0.0001
D_MINIVAN	0.817	-0.2016	<0.0001

p-value for entire model <0 0001
Source: Logistic Regression or F MD C PA and " o

Plugging the coefficients, the logistic regression model yields predicted probability of rollover as shown in Figure 8. Figure 8 represents the probability distribution of rollover, conditional on a single vehicle crash, for what can be considered as a "best-case" scenario in terms of factors that affect rollover as an outcome. The "favorable" scenario is a combination of favorable driving conditions and factors for the terms included in the logistic regression model. This includes good light and weather conditions, low-speed road (under 50 mph), flat terrain, straight and good road conditions and no driver impairment.

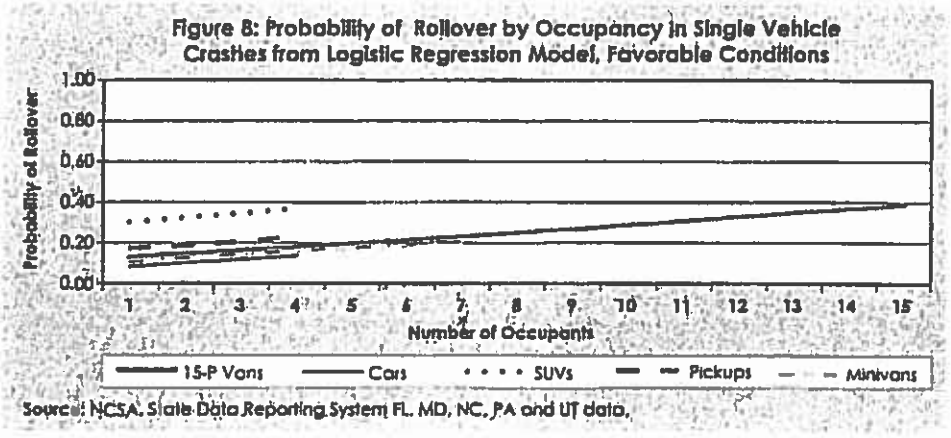
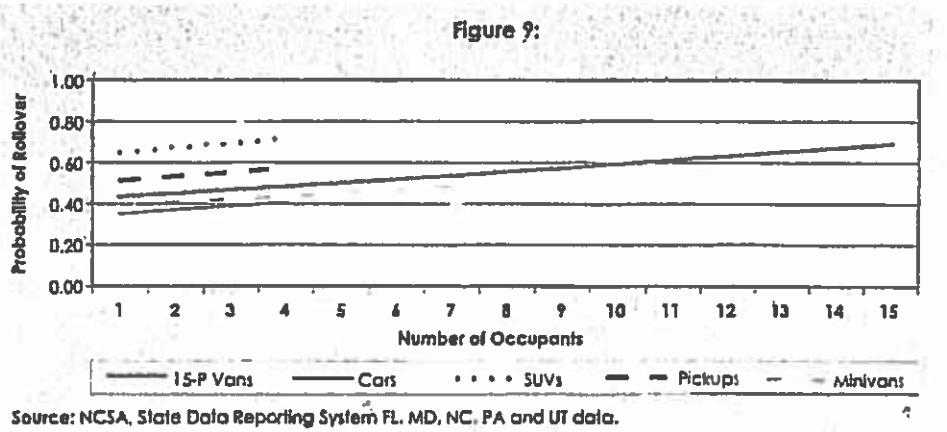


Figure 9 depicts the distribution of the probability of rollover for what can be considered as a "adverse" scenario to affect rollover. The adverse scenario includes statistically significant variables, fast and curve. The probabilities depicted in Figure 9 are for crashes occurring on curved areas on high-speed roads.

As seen in Figures 8 and 9, the probability of rollover as indicated by the logistic regression model

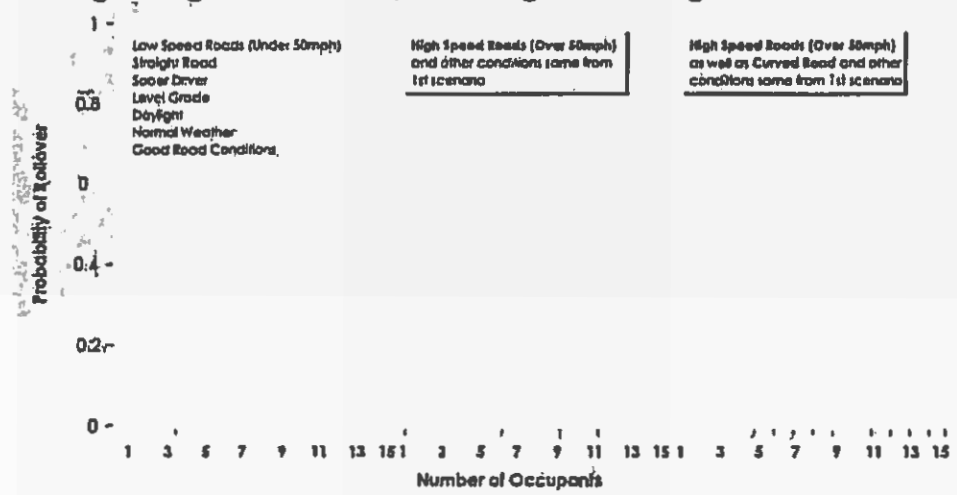


C 633

indicates a progressively worsening risk of rollover with increasing occupancy for all vehicle types including 15-passenger vans. The probability of rollover with just the driver in the vehicle ranges from under 0.20 in favorable conditions to above 0.4 in adverse conditions. However, when the van is loaded to or above its designed seating capacity, the corresponding probabilities increase to an estimated 0.40 and 0.60, respectively. This trend, while observed for all types of vehicles, is most pronounced for 15-passenger vans because of the sheer multiplicative effect of the larger seating capacity for 15-passenger vans. Figure 10 depicts various regression curves that depict how the probability of rollover in single vehicle crashes involving 15-passenger vans change upon the addition of various adverse factors that can be considered to affect rollover as an outcome.

Figure 10 depicts the relative shifts in the estimated probabilities of rollover of a 15-passenger van by

Figure 10: Predicted Probabilities of Rollover Under Varying Scenarios Based On Logistic Regression Estimates, 15-Passenger Vans in Single Vehicle Crashes



occupancy, conditional on being in a single vehicle crash, for various combinations of scenarios that could affect ro lover outcome. As expected, the probability curves have higher starting values (at Occupancy 1) for more adverse scenarios but follow a more or ess progressively worsening rollover rate with increasing

. Conclusions

The purpose of this report was to analyze the circumstances in crashes that resulted in the rollover of a 15-passenger van. State crash data from five states in the period from 1994 to 2001 were used to identify vehicle, environmental and driver related factors that were significant in affecting rollovers in single vehicle crashes involving these vans. Of particular interest was the effect on increasing occupancy on the rollover propensity of 15-passenger vans. For comparison, similar analyses were performed for other types of passenger vehicles (SUVs, Pickup Trucks, Minivans and Passenger Cars). Also, NHTSA's FARS data from 1990 to 2002 were used to examine the circumstances in fatal, rollover crashes involving 15-passenger vans. The extent of seat belt use among fatally injured occupants of 15-passenger vans was compared with that of occupants of other types of vehicles. While comparisons can be made of restraint use among fatally injured occupants of different vehicle types, the true extent of belt usage can only be assessed by analyzing data that is representative of all crashes – data that is not presently available.

The overall rate of rollover in single vehicle crashes, as observed from NHTSA's State Data, for 15 passenger van is in fact lower than that for SUVs and Pickup Trucks. However, the effect of occupancy is observed to have a wider disparity in rollover r tes in 15-passenger vans between conditions when the vehicle was loaded above or below ha f ts designed seating capacity. In fact, when l aded to above half their seating capac ty 15-passenger vans were observed to have 2.2 times the rollover rate as compared to whe they were loaded to r below half their designed seating capacity. This compares to lower r tios for SUVs (1.4), Pickup Trucks (1.3), Passenger Cars (1.3) and Minivans (7)

A majority of the high occupancy level rollovers involving 15-passenger vans were in high-speed roads (50+ mph) However, conditional on a crash having occurred on a high-speed road, the disparity in the rollover rates between scenarios when they were loaded to or below half their seating capacity and when they were loaded above half the designed seating capacity was most pronounced for 15-passenger vans. The rollover rate under the heavily-loaded scenario was again more than 2 times the rate under the lightly loaded scenario. This compares to lower ratios for SUVs (1.23), Pickup Trucks (1.20), Passenger Cars (1.16) and Minivans (1.32).

The overall rate of rollover, expressed as the proportion of single vehicle crashes that resulted in a rollover, for 15-passenger vans is, if not lower, comparable with that of other passenger vehicles. However, statistical analysis based on state crash data shows that 15-passenger vans exhibit much higher risk, measured in terms of odds, of rollover when the vans were traveling at their full capacity as compared to when the driver was the only occupant in the van. While the increment in the risk of rollover with every unit increase in occupancy for 15-passenger vans was comparable to other passenger vehicles, 15-passenger vans exhibited a much higher risk of rollover when they were loaded at or above their designed seating capacity. In fact, the odds of rollover for 15-passenger vans with 15 or more occupants was more than five times the risk of rollover when the driver was the only occupant in the van This increase in the risk of rollover at or above the designed seating capacity is much ess f r SUVs a d Pickup Trucks (about 2 times), Mini ans (1.7 imes) and Passenger Cars (1.3 times). In summary, while the overall rollover rate for 15-passenger vans are comparable to other passenger vehicles, the disparity in the risk of rollover under fully and lightly loaded conditions is most pronounced for 15-passenger vans because they can carry a larger number of occupants.

The analysis also showed speed and the geometry of the road to be factors significant in affecting rollover outcome in all types of vehicles. The posted speed limit, used as an explanatory variable for travel speed, was determined to have a significant effect on the risk of rollover for 15-passenger vans as compared to other types of vehicles. In fact, the risk of rollover, as measured by the odds, for a 15-passenger van that is traveling on a high-speed road (50+ mph) is about five times the risk of rollover for a van that is traveling on a low-speed road (under 50 mph).

The geometry of the road, as in if the road is curved or not, also was found to have a significant role in affecting rollover outcome in 15-passenger vans. The risk of rollover, measured by the odds, for a 15-passenger van traveling on a curved road is about twice the risk of rollover for a van that is traveling on a straight road.

Analysis of FARS data showed that in the period from 1990 to 2002, there were 1,111 fatally injured occupants of 15-passenger vans. Of these fatalities, 684, or about 60 percent of all 15-passenger van occupant fatalities, occurred in single vehicle crashes. Slightly more than 80 percent of all fatalities in single vehicle crashes involving 15-passenger vans occurred when the vans rolled over.

The observed safety belt usage rate is very low among fatally injured occupants of 15-passenger vans involved in single-vehicle crashes. More than three-fourths of 15-passenger van occupants killed in single-vehicle crashes were not properly restrained. Also, a majority (92 percent) of those who were properly restrained survived the crash. An unrestrained 15-passenger van occupant involved in a fatal, single vehicle crash is about three times as likely to have been killed as compared to a properly restrained occupant.

Proper restraint use greatly reduces the chances of ejection from a 15-passenger van. About 60 percent of the 15-passenger van occupants killed in single-vehicle crashes were ejected from the vehicle. An unrestrained occupant of a 15-passenger van is about four times as likely to be ejected from the van as compared to a properly restrained occupant.

Outreach efforts on this topic should emphasize the significant disparity between the risks of rollover of a 15-passenger van between lightly loaded (driver only) and fully loaded (15+ occupants) conditions. Drivers of 15-passenger vans ought to be cognizant of this change in risk when they are driving a van that is fully loaded They also should be driven with utmost care while driving on high-speed roads as well as while negotiating a turn – conditions shown to have a significant impact in increasing the risk of rollover in any vehicle. Also, all occupants should be properly restrained when the vehicle is in motion to reduce the risk of occupant ejection in rollover events. Also, driver training on safe operation of these vans, especially of fully-loaded ones traveling on high-speed roads, is recommended.

8. References

1. Garrott, R.W., (2001) ***The Rollover Propensity of Fifteen-Passenger Vans,*** National Highway Traffic Safety Administration, Department of Transportation

2. Winnicki, J., (1996) ***Estimating the Injury-Reducing Benefits of Ejection-Mitigating Glazing,*** DOT HS 808-369, National Highway Traffic Safety Administration, Department of Transportation

AGREEMENT

of

AUGUST 20, 2002

Between Railroads Represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

Employees of such Railroads Represented by the

UNITED TRANSPORTATION UNION

D-1

Notwithstanding any provision to the contrary, the Panel may be dissolved at any time by majority vote of the members."

ARTICLE IX - OFF-TRACK VEHICLE ACCIDENT BENEFITS

Article XI(b) of the July 17, 1968 Brotherhood of Railroad Trainmen Agreement, Article IX(b) of the July 29, 1968 Switchmen's Union of North America Agreement, Article IX(b) of the September 14, 1968 Brotherhood of Locomotive Firemen and Enginemen Agreement, Article V(b) of the March 19, 1969 United Transportation Union (C) Agreement and Article V(b) of the April 15, 1969 United Transportation Union (E) Agreement, as amended by Article XIII of the August 25, 1978 United Transportation Union Agreement, are further amended as follows effective on the date of this Agreement.

Section 1

Paragraph(b)(1) - Accidental Death or Dismemberment of the above-referenced Agreement provisions is amended to read as follows:

"(1) Accidental Death or Dismemberment

The carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	$300,000
Loss of Both Hands	$300,000
Loss of Both Feet	$300,000
Loss of Sight of Both Eyes	$300,000
Loss of One Hand and One Foot	$300,000
Loss of One Hand and Sight of One Eye	$300,000
Loss of One Foot and Sight of One Eye	$300,000
Loss of One Hand or One Foot or Sight of One Eye	$150,000

865 0-2

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

No more than $300,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident."

Section 2

Paragraph (b)(3) - Time Loss of the above-referenced Agreement provisions is amended to read as follows:

"(3) Time Loss

The carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) commencing within 30 days after such accident 80% of the employee's basic full-time weekly compensation from the carrier for time actually lost, subject to a maximum payment of $1,000.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act."

Section 3

Paragraph(b)(4) - Aggregate Limit of the above-referenced Agreement provisions is amended by raising such limit to $10,000,000.

D-3

274/13-2968 Atty. No. 27915

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL, Plaintiff, vs. UNION PACIFIC RAILROAD COMPANY; PROFESSIONAL TRANSPORTATION, INC., d/b/a PTI; and ACE AMERICAN INSURANCE CO., Defendants.	NO: 12 CH 38582 Calendar 14
PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI; Counter-Plaintiff/Defendant, vs. MARY TERRY CARMICHAEL, Counter-Defendant/Plaintiff, and STATE OF ILLINOIS, Counter-Defendant.	

AFFIDAVIT
OF
LOWELL WOODS

NOW COMES, LOWELL WOODS, Risk Manager of PROFESSIONAL TRANSPORTATION, INC. ("PTI"), and after first being sworn upon his oath, states as follows:

1. I have served as Risk Manager for PTI for nine (9) years. While so serving, I have become became familiar with the facts surrounding a collision between a PTI vehicle and a vehicle driven by another motorist named, Dwayne Bell, which occurred on November 13, 2010 at the intersection of Roosevelt Road and Blue Island Avenue in Chicago, Illinois.

2. As part of my job as Risk Manager, I reviewed the applicable Chicago Police Crash Report; ordered and reviewed the post-accident photos of the PTI vehicle; and reviewed the recorded statement and deposition provided by PTI passenger, Mary Terry Carmichael.

3. Thus, I can state that the PTI vehicle involved in the collision was a 2007 Chevrolet, "Uplander" LS, 4 door van; Vin No. 1GNDV23147D199650. Furthermore, I can confirm that true and accurate post-accident photos of the PTI van involved in said collision are attached hereto.

4. According to the specifications for the vehicle, it was designed to seat no more than seven (7) occupants, including the driver. According to the accident records mentioned above, the PTI vehicle was transporting three Union Pacific employees at the time of the collision, including Mary Terry Carmichael.

FURTHER AFFIANT SAYETH NOT:

LOWELL WOODS
PROFESSIONAL TRANSPORTATION, INC.
Risk Manager
3700 Morgan Avenue
Evansville, IN 46224

Subscribed and Sworn to before
me this 7th day of February, 2014.

Notary Public

BRADFORD R. SHIVELY
RESIDENT OF ELKHART COUNTY, INDIANA
COMMISSION EXPIRES: 6-24-2017

NOTARY PUBLIC SEAL INDIANA

274/13-2968 Atty. No. 27915

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL, Plaintiff; vs. UNION PACIFIC RAILROAD COMPANY; PROFESSIONAL TRANSPORTATION, INC., d/b/a PTI; and ACE AMERICAN INSURANCE CO., Defendants.	)	NO: 12 CH 38582 Calendar 14
PROFESSIONAL TRANSPORTATION, INC., d/b/a PTI; Counter-Plaintiff/Defendant, vs. MARY TERRY CARMICHAEL, Counter-Defendant/Plaintiff; and STATE OF ILLINOIS, Counter-Defendant.	)	

AFFIDAVIT
OF
ROBERT TEAVAULT

NOW COMES, ROBERT TEAVAULT, Executive Vice President of Risk Management and Strategic Planning of PROFESSIONAL TRANSPORTATION, INC. ("PTI"), and after first being sworn upon his oath, states as follows:

1. I have served as Executive Vice President of Risk Management and Strategic Planning for PTI for over 4 years. From 1994 through 2008, I also led PTI's day-to-day operations. While so serving, I became very familiar with PTI's business operations.

2. PTI is headquartered in Evansville, Indiana, and it has local offices in other states from which it conducts its transportation operations. Since 1980, PTI has contracted with railroads, such as Union Pacific Railroad and Amtrak, to provide them with ground

transportation for their employees. PTI's fleet of vehicles presently based in Illinois consists entirely of 156 vans, and each of them provides seating for six (6) passengers and a driver. In providing transportation to railroad employees, PTI's vehicles often travel across state lines into Iowa, Missouri, Kentucky, Wisconsin and Indiana.

3. In my assignment as Executive Vice President of Risk Management and Strategic Planning, I am familiar with PTI's insurance practices. I have reviewed Plaintiff's complaint in this case, as well as the amended answer filed by Ace Insurance Company, and I can state from my personal knowledge that Ace did issue the Business Auto Policy to PTI (No. ISA H08589410) which is attached as Exhibit F to Plaintiff's Complaint. The policy had effective dates of April 1, 2010 to April 1, 2011, and so it was in effect at the time of Plaintiff's November, 2010 accident.

4. Said policy provided liability coverage for $5,000,000, per my request. PTI also understood that both the underinsured and the uninsured motorist ("UM/UIM") coverage provided by the policy was in the amounts of $20,000 per person and $40,000 per occurrence, which was also consistent with my request. PTI has maintained the same UM/UIM coverage limits in Illinois to the present day.

5. Since learning of Ms. Carmichael's lawsuit arising out of the vehicle collision of November 13, 2010, I have requested that PTI's insurance broker provide me with a UM/UIM price quote in an amount sufficient to provide $250,000, per passenger, in UM/UIM coverage for each of PTI's Illinois-based vehicle, even though none of the states adjoining Illinois impose such a substantial UM/UIM coverage requirement.

6. In response, PTI's insurance broker provided me with the quote attached hereto indicating that $1.5 million in UM/UIM coverage would be required for each of PTI's 156

Illinois-based vehicles, since each vehicle is capable of seating as many as six (6) passengers, and that such UM/UIM coverage would increase PTI's auto insurance costs by $580.00 per vehicle for a total annual increase of $90,480.00.

~~FURTHER AFFIANT SAYETH NOT~~

ROBERT TEAVAULT
PROFESSIONAL TRANSPORTATION, INC.
Executive Vice President of Risk Management
and Strategic Planning
3700 Morgan Avenue
Evansville, IN 46224

Subscribed and Sworn to before
me this 7th day of February, 2014.

Notary Public

TAMARA LAINE JOHNSON
Resident of Vanderburgh County, IN
Commission Expires: September 30, 2020

345

No. 1-15-3441

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARY TERRY CARMICHAEL, Plaintiff-Respondent, v. PROFESSIONAL TRANSPORTATION, INC., a Foreign Corporation, d/b/a PTI, Defendant-Petitioner, (UNION PACIFIC RAILROAD COMPANY, a Foreign Corporation; and ACE AMERICAN INSURANCE CO., a Foreign Corporation, Defendants).	)	Appeal from the Circuit Court of Cook County.
PROFESSIONAL TRANSPORTATION, INC., a Foreign Corporation, d/b/a PTI Counter-Plaintiff-Defendant, v. MARY TERRY CARMICHAEL, Counter-Defendant-Plaintiff (JESSE WHITE, ILLINOIS SECRETARY OF STATE, Counter-Defendant).	)	No. 12 CH 38582 Honorable Sophia H. Hall, Judge Presiding.

ORDER

This cause coming to be heard on the Supreme Court Rule 308 (Ill. S. Ct. R. 308 (amended Oct. 15, 2015, eff. Jan. 1, 2016)), petition for leave to appeal of defendant-petitioner,

1173

15-3491

PROFESSIONAL TRANSPORTATION, INC., all parties having been given notice, this court being fully advised in the premises, and no response having been filed;

IT IS HEREBY ORDERED that the Rule 308 (Ill. S. Ct. R. 308 (amended Oct. 15, 2015, eff. Jan. 1, 2016)), petition for leave to appeal is DENIED as defendant-petitioner has not sufficiently established that an immediate appeal may materially advance the ultimate termination of the litigation.

JUSTICE

JUSTICE

JUSTICE

ORDER ENTERED

JAN 13 2016

APPELLATE COURT, FIRST DISTRICT

1174

No. 1-15-3441

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARY TERRY CARMICHAEL, Plaintiff-Respondent, v. PROFESSIONAL TRANSPORTATION, INC., a Foreign Corporation, d/b/a PTI, Defendant-Petitioner, (UNION PACIFIC RAILROAD COMPANY, a Foreign Corporation; and ACE AMERICAN INSURANCE CO., a Foreign Corporation, Defendants).	Appeal from the Circuit Court of Cook County.
PROFESSIONAL TRANSPORTATION, INC., a Foreign Corporation, d/b/a PTI Counter-Plaintiff-Defendant, v. MARY TERRY CARMICHAEL, Counter-Defendant-Plaintiff (JESSE WHITE, ILLINOIS SECRETARY OF STATE, Counter-Defendant).	No. 12 CH 38582 Honorable Sophia H. Hall, Judge Presiding.

ORDER

This cause coming to be heard on the petition for rehearing of defendant-petitioner, PROFESSIONAL TRANSPORTATION, INC., from the denial of its petition for leave to appeal, this court being fully advised in the premises, all parties having been given notice, and an answer having been filed;

IT IS HEREBY ORDERED that the petition for rehearing is denied.

JUSTICE JUSTICE JUSTICE

T/C #12

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Carmichael

v.

PTI, et al.

No. 12CH38582

ORDER

This cause coming onto be heard and the Court being advised. 8C4C

IT IS HEREBY ORDERED that this matter is dismissed without prejudice upon Plaintiff's motion to Voluntarily dismiss this matter without prejudice.

Atty. No.: 25953

Name: John Bishof

Atty. for: Plaintiff

Address: 101 N. Wacker Dr. Ste 200

City/State/Zip: Chicago IL 60606

Telephone: 317-630-2048

JUDGE JAMES P. FLANNERY

ENTERED: DEC 13 2016

Circuit Court-1505

Dated: _____

Judge

Judge's No. 1505

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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C 1176

0 3323 AAP A.W.W. #27915

17-0075

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL,

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, A foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI; and ACE AMERICAN INSURANCE CO., a foreign corporation,

Defendants.

No: 12 CH 38582
Calendar 14

PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI;

Counter-Plaintiff/Defendant-Appellant,

vs.

MARY TERRY CARMICHAEL,

Counter-Defendant/Plaintiff-Appellee,

and

JESSE WHITE, ILLINOIS SECRETARY OF STATE,

Counter-Defendant-Appellee.

FILED
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2017 JAN -6 PM 3:31
CIVIL APPEALS DIVISION
DOROTHY BROWN, CLERK

NOTICE OF APPEAL

Notice is hereby given that Counter-Plaintiff/Defendant-Appellant Professional Transportation, Inc., a foreign corporation, d/b/a PTI (hereinafter "PTI") hereby appeals to the Appellate Court of Illinois, First District, from the January 30, 2015 Decision of the Circuit Court of Cook County, County Department, Chancery Division (attached as

1177

Ex. A), dismissing PTI's counterclaim that challenged the constitutionality of certain provisions of 625 ILCS 5/8-101(c) and 625 ILCS 5/8-116 on various grounds. The January 30, 2015 Decision was rendered final and appealable by the dismissal order entered herein on December 13, 2016 (attached as Ex. B).

By this appeal, Counter-Plaintiff/Defendant-Appellant PTI will ask the Appellate Court to reverse, vacate or set aside the January 30, 2015 Decision dismissing PTI's counterclaim, and to hold that the challenged statutory provisions in 625 ILCS 5/8-101(c) and 625 ILCS 5/8-116 are unconstitutional on one or more of the grounds set forth in PTI's counterclaim.

Respectfully submitted,

HALL PRANGLE & SCHOONVELD, LLC

By: _____
Hugh C. Griffin, one of the attorneys for
Counter-Plaintiff/Defendant-Appellant
Professional Transportation, Inc.

Hugh C. Griffin (hgriffin@hpslaw.com)
HALL PRANGLE & SCHOONVELD, LLC
200 South Wacker Drive, Suite 3300
Chicago, Illinois 60606
Phone: (312) 345-9600
Fax: (312) 345-9608
Firm I.D. 39268
HPSDocket@hpslaw.com

George H. Brant (GBrant@judgeltd.com)
JUDGE, JAMES, HOBAN & FISHER, LLC
422 North Northwest Highway, Suite 200
Park Ridge, Illinois 60068
Phone: (847) 292-1200
Fax: (847) 292-1208
Firm I.D. 27915

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY; a foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corporation d/b/a PTI; and ACE American Insurance Company, a foreign corporation

Defendants.

Case No. 12 CH 38582

Hon. Sophia H. Hall

PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI;

Counter-Plaintiff/Defendant,

v.

MARY TERRY CARMICHAEL,

Counter-Defendant/Plaintiff,

and

STATE OF ILLINOIS,

Counter-Defendant.

DECISION

This case comes on before the Court on counter-defendant, the State of Illinois,' Motion to Dismiss the Counterclaim of counter-plaintiff Professional Transportation, Inc. (PTI), pursuant to 735 ILCS 5/2-615 and 2-619. PTI's Counterclaim challenges the constitutionality of certain provisions of the Illinois Vehicle Code, 625 ILCS 5/8-101(c) and 625 ILCS 5/8-116, that apply to a "contract carrier transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers." PTI admits that it is a contract carrier of employees.

EXHIBIT
sticker
A

Section 8-101(c) requires that such contract carriers "verify hit and run and uninsured motor vehicle coverage, as provided in Section 143a of the Illinois Insurance Code, and underinsured motor vehicle coverage, as provided in Section 143a-2 of the Illinois Insurance Code, in a total amount of not less than $250,000 per passenger." Section 5/8-116 provides that failure to do so is a Class A misdemeanor.

In Count I, PTI alleges the statutory provisions violate the Special Legislation Clause of the Illinois Constitution, Article 4, § 3. In Count II, PTI alleges those provisions violate the Equal Protection Clauses of the 14th Amendment of the United States Constitution and Article 1, § 2 of the Illinois Constitution, in that they unfairly single out contract carriers of employees using vehicles designed for 15 passengers or fewer. In Count III, PTI alleges the provisions violate the Due Process clauses of the 5th and 14th Amendments of U.S. Constitution and Article 1, § 2 of the Illinois Constitution, on the basis that they are "unconstitutionally vague." In Count IV, PTI alleges the statute violates the Commerce Clause of the U.S. Constitution, Article 1, § 8.

Generally, courts begin any constitutional analysis with the presumption that the challenged legislation is constitutional. *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 377 (Ill. 1997). The challenging party bears the burden to establish the statute's invalidity. *Id.* Courts have a duty to "sustain legislation whenever possible and resolve all doubts in favor of constitutional validity." *In re Marriage of Lappe*, 176 Ill. 2d 414, 422 (Ill. 1997)

ANALYSIS

I
Due Process – Vagueness (Count III)

The Court first addresses PTI's due process count because, if the Court finds the statute is unconstitutionally vague on its face, it need not reach the arguments on the equal protection, special legislation, or commerce clause counts.

Generally speaking, a statute is not unconstitutionally vague if it is explicit enough to serve as a guide to those who must comply with it. *GMC v. State Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 24 (2007). A court will only strike down a statute as vague when its terms are "so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts." *Id.* Where, as here, violation of the statute carries criminal penalties, the statute must meet two basic criteria. First, the statute must be sufficiently definite such that it "gives persons of ordinary intelligence a reasonable opportunity to distinguish between lawful and unlawful conduct." Second, the statute must "adequately define the criminal offense in such a manner that does not encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 177 Ill. 2d 440, 449 (1997).

PTI alleged that the phrase "a vehicle designed to carry 15 or fewer passengers," and the phrase "[coverage] in a total amount of not less than $250,000 per passenger," are ambiguous. The State moves to dismiss Count III under § 2-615, arguing that both statutory phrases are sufficiently precise and quantitative.

A.

PTI first argues that the phrase "designed to carry 15 or fewer passengers" is ambiguous because it is capable of two reasonable interpretations, citing *In re BLS*, 202 Ill. 2d 510, 517 (2002). PTI argues that the statute does not make clear whether it applies only to vehicles with a designed capacity of 15 passengers, or also to smaller vehicles that are designed to carry a lesser capacity, such as PTI's 6-passenger vans. PTI argues that if the Court should find that the provision is ambiguous, then it should apply the "rule of lenity" and resolve this ambiguity in its favor, because PTI is accused of violating a criminal statute. *People v. Jones*, 223 Ill. 2d 569 (2006).

PTI argues that its argument is buttressed by the State's own briefing on this motion. On the one hand, the State's due process argument posits that the statute clearly applies to a vehicle of any size that does not have a capacity for more than 15 people. On the other hand, in its equal protection argument (addressed more fully below), the State argues that one rational basis for the legislation could be particular concern about the safety of 15-passenger vans, which, according to a report from the National Transportation Safety Board that the State provides, are more dangerous than larger vehicles.

The State argues that the phrase "a vehicle designed to carry 15 or fewer passengers" is not vague. The State argues that the phrase refers to a vehicle of any size that does not have a capacity for more than 15 people. Thus, it clearly applies to both 15-passenger vans, as well as to smaller vans or cars, such as the 6-passenger vans PTI says it uses. The State argues the statute cannot also be reasonably interpreted to mean *only* 15-seater vans, as PTI argues, because that would render the "or fewer" language superfluous. A provision meant to apply only to 15-passenger vans would say "designed to carry 15 passengers," and omit the "or fewer" language.

This Court finds that the language "a vehicle designed to carry 15 or fewer passengers" is not constitutionally vague. On its face, the legislation explicitly refers to any vehicle designed to carry 15, or any number fewer than 15, passengers. Thus, it includes a 15-passenger van, a 6-passenger van, and any other vehicle so long as its passenger capacity is not more than 15. The statute therefore meets the test cited in *Morales*, because it both distinguishes between lawful and unlawful conduct, and defines the criminal offense in in a way that does not encourage arbitrary and discriminatory enforcement.

B.

PTI, next, argues that the phrase "in a total amount of not less than $250,000 per passenger" violates due process because it does not make clear whether it applies to the maximum passenger capacity of a vehicle, or its actual capacity at the time of an accident.

The State argues that the language is not vague because it is not ambiguous and clearly requires $250,000 coverage for each passenger who could be in the vehicle at the time of an accident. Thus, for example, the State states that a vehicle with a capacity for 10 passengers could result in a maximum payout of $2.5 million of coverage for an accident where all 10 were injured in one occurrence. If fewer passengers were injured than the maximum the vehicle can hold, then the coverage would still be $250,000 per person injured. Thus, the carrier must maintain coverage for the maximum number of passengers it carries in a vehicle.

The Court finds that the phrase requiring coverage of at least "$250,000 per passenger" is not vague. On its face, the phrase can only be reasonably understood to apply to the total number of passengers who could be occupying the vehicle and, therefore, could be at risk should there be an accident.

Accordingly, the Court grants the State's Motion to Dismiss as to Count III, finding that both of the challenged phrases are not vague and therefore do not violate due process of law.

II

Equal Protection and Special Legislation (Counts I and II)

Courts generally review special legislation claims under the same standards as equal protection claims. *GMC v. State Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 30-31 (2007). Moreover, in applying an equal protection analysis, courts apply the same standard under both the United States Constitution and the Illinois Constitution.

Where, as here, the statute in question does not affect a fundamental right or involve a suspect classification, the court applies the deferential "rational basis" test to the legislation. *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 393 (Ill. 1997). Under the rational basis test, the court will uphold the statute so long as the statutory classification is rationally related to a legitimate state interest. If the court can reasonably conceive of any set of facts that justify the statutory distinction, it will uphold the statute.

The State moves to dismiss Counts I and II under § 2-619, arguing that a conceivable rational basis exists to require a "contract carrier transporting employees in the course of their

employment" to carry higher levels of uninsured and underinsured motorist insurance coverage on vehicles designed to carry 15 or fewer passengers, than is required for other owners and vehicles.

A.

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.

The State argues that a rational basis for singling out contract carriers transporting employees, "in the course of their employment," is that the legislature could have been seeking to protect employees whose job duties require them to be transported by their employers. Plaintiff in this case, Mary Carmichael, and others who work for the railroad, ride in contract carriers provided by their employers to travel between job sites. The state cites various cases where certain special carriers, like taxi cabs, were constitutionally singled out. *Weksler v. Collins*, 317 Ill. 132, 139-40 (1925), *Millers v. National Insurance Company v. City of Milwaukee*, 503 N.W. 284 (Wisc. Ct. App. 1993).

This Court finds that the reasons articulated by the State provide a conceivable rational basis for the statute's requirement that contract carriers, who contract with employers to carry their employees in the course of their job duties, must purchase higher levels of uninsured/underinsured motorist insurance coverage than other vehicle owners are required to purchase. Such employees are being transported as part of their job, and have no choice in their employer's selection of contract carriers. PTI's argument that the legislature might have done more to protect these employees does not make the legislation irrational, because a statute need "not address every problem that might conceivably been addressed." *Crustus v. Ill. Gaming Bd.*, 348 Ill. App. 3d 44, 59 (1st Dist. 2004).

B.

PTI also argues that there is no conceivable rational basis to apply the statute to contract carriers of employees who use vehicles designed to carry 15 or fewer passengers, and that requiring carriers like PTI, who only uses 6-passenger vehicles, to bear this burden is arbitrary.

The State argues that a rational basis for the legislature to require enhanced uninsured and underinsured coverage for vehicles "designed to carry 15 or fewer passengers" is their belief that vehicles designed to carry 15 or fewer passengers are more dangerous than larger vehicles designed to carry more than 15 passengers, and therefore, higher levels of insurance would provide more protection to passengers in those vehicles. In support, the State attaches a document issued by the National Transportation Safety Board on October 15, 2002 entitled "Safety Report: Evaluation of the Rollover Propensity of 15-Passenger Vans," which concludes that 15-passenger vans are "involved in a higher number of single-vehicle accidents involving rollovers than are other passenger vehicles."

The State's evidence of dangerousness applies to 15-seater vans, but not to 6-seater vans, which are also covered by the legislation. The State has offered no basis relating to safety concerns with 6-seater vans. This Court, however, has determined that the statute has a rational basis in requiring contract carriers of employees to carry enhanced insurance coverage. PTI admits that it is a contract carrier of employees. PTI has not met its burden to show how the statute's vehicle-size distinction makes the statute otherwise arbitrary.

Accordingly, the Court grants the State's Motion to Dismiss as to Counts I and II, finding that a rational basis exists for requiring contract carriers of employees, who use vans designed for 15 or fewer people, to provide enhanced uninsured/underinsured motorist coverage.

III
Commerce Clause (Count IV)

A state statute is valid under the commerce clause if it "even handedly effectuates a legitimate local public interest, the effect on interstate commerce is only incidental, and the burden on commerce is not clearly excessive to the local benefits." *GMC*, 224 Ill. 2d at 27.

The State moves to dismiss Count IV under § 2-615. PTI alleges that the statute's insurance requirement is an "undue and unreasonable burden on interstate commerce" because "contract motor carriers, such as PTI . . . could not know how much underinsured motorist coverage to obtain in advance of operating, unless one refused to operate any fleet vehicle until each vehicle was fully occupied."

In its response brief, PTI takes a new position, arguing that the statute burdens interstate commerce because none of the neighboring states in which PTI operates have such a requirement. Thus, PTI argues that the statute requires it to maintain a higher level of coverage for vehicles that it operates both within and outside of Illinois.

The Court finds that the statute does not violate the Commerce Clause because PTI has not alleged more than an incidental burden on interstate commerce. Rather, PTI has alleged that its business is burdened by the legislation. The Commerce Clause "protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations." *Minn. v. Clover Leaf Creamery Co.*, 449 U.S. 456, 474 (U.S. 1981). Moreover, the burden PTI alleges – that it must maintain higher levels of coverage than it needs in other states – is not "clearly excessive to the local benefits," which protect employees being transported in the course of their employment.

Accordingly, the Court grants the State's Motion to Dismiss as to Count IV.

Entered: _____
Judge Sophia H. Hall
JAN 30 2015

Date: _____

1185

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Carmichael

v.

PTI, et al.

No. 12 CH 38582

ORDER

This cause coming on to be heard and the Court being advised.

IT IS HEREBY ORDERED that this matter is dismissed without prejudice upon Plaintiff's motion to Voluntarily dismiss this matter without prejudice.

Atty. No.: 25953

Name: John Bishof

Atty. for: Plaintiff

Address: 101 N. Wacker Dr. Ste 200

City/State/Zip: Chicago IL 60606

Telephone: 312-636-2048

ENTERED:

JUDGE JAMES P. FLANNERY

Dated: DEC 13 2016

Circuit Court-1...

Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLI...

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EXHIBIT

B

118

NATIONAL REGISTERED AGENTS, INC.

SERVICE OF PROCESS SUMMARY TRANSMITTAL FORM

To: Ryan Parker
UNITED COMPANIES
3700 E Morgan Ave
Evansville, IN 47715-2240

SOP Transmittal # 530656921

312-345-4336 - Telephone

Entity Served: PROFESSIONAL TRANSPORTATION, INC. (Domestic State: INDIANA)

Enclosed herewith are legal documents received on behalf of the above captioned entity by National Registered Agents, Inc. or its Affiliate in the State of ILLINOIS on this 08 day of February, 2017. The following is a summary of the document(s) received:

1. **Title of Action:** MARY TERRY CARMICHAEL, Pltf. vs. PROFESSIONAL TRANSPORTATION, INC., etc., Dft.

2. **Document(s) Served:** SUMMONS & COMPLAINT
Other: Attachment(s)

3. **Court of Jurisdiction/Case Number:** Cook County Circuit Court - County Department - Chancery Division, IL
Case # 2017CH01221

4. **Amount Claimed, if any:** N/A

5. **Method of Service:**

_X_ Personally served by: _X_ Process Server ___ Law Enforcement ___ Deputy Sheriff ___ U. S Marshall

___ Delivered Via: ___ Certified Mail ___ Regular Mail ___ Facsimile

___ Other (Explain):

6. **Date and Time of Receipt:** 02/08/2017 11:30:00 AM CST

7. **Appearance/Answer Date:** Within 30 days after service of this Summons, not counting the day of service

8. **Received From:** JOHN C. BISHOF, JR.
LAW OFFICE OF JOHN C. BISHOF, PC
101 N. Wacker Dr.
Suite 200
Chicago, IL 60606
312-630-2048

9. **Carrier Airbill #** 1ZY041160198610162

10. **Call Made to:** Not required

11. **Special Comments:**
SOP Papers with Transmittal, via UPS Next Day Air

Image SOP

Email Notification, STEVE GREULICH SGREULICH@UNITEDEVV.COM

Email Notification, Ryan Parker Ryan.parker@unitedevv.com

Email Notification, MICHAEL C. HAHN CHAHN@UNITEDEVV.COM

Email Notification, Crystal Loudermilk crystal.loudermilk@unitedevv.com

Email Notification, Taraha Smith taraha.smith@unitedevv.com

NATIONAL REGISTERED AGENTS, INC. **CopiesTo:**

ORIGINAL

NATIONAL REGISTERED AGENTS, INC.

SERVICE OF PROCESS SUMMARY TRANSMITTAL FORM

To: Ryan Parker
UNITED COMPANIES
3700 E Morgan Ave
Evansville, IN 47715-2240

SOP Transmittal # 530656921

312-345-4336 - Telephone

Entity Served: PROFESSIONAL TRANSPORTATION, INC. (Domestic State: INDIANA)

Transmitted by Khalilah Starks

ORIGINAL

Summons - Alias Summons (12/31/15) CCG N001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MARY TERRY CARMICHAEL

v.

PROFESSIONAL TRANSPORTATION

No. 2017-CH-01221

Defendant Address:
PROFESSIONAL TRANSPORTATION
208 S. LASALLE ST., SUITE 814
CHICAGO, IL 60606

☑ SUMMONS ☐ ALIAS - SUMMONS

To each defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

☑ Richard J. Daley Center, 50 W. Washington, Room 802, Chicago, Illinois 60602

☐ District 2 - Skokie
5600 Old Orchard Rd.
Skokie, IL 60077

☐ District 3 - Rolling Meadows
2121 Euclid 1500
Rolling Meadows, IL 60008

☐ District 4 - Maywood
Maybrook Ave.
Maywood, IL 60153

☐ District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455

☐ District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60428

☐ Richard J. Daley Center
50 W. Washington, LL-01
Chicago, IL 60602

You must file within 30 days after service of this Summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:
This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than thirty (30) days after its date.

☐ Atty. No.: 25953

Name: BISHOF JOHN S

Atty. for: MARY TERRY CARMICHAEL

Address: 101 N WACKER DR STE 200

City/State/Zip Code: CHICAGO, IL 60606

Telephone: (312) 630-2048

Primary Email Address: jsbishof@jsblegal.com

Secondary Email Address(es):

pgerberich@jsblegal.com

Witness: Thursday, 26 January 2017

DOROTHY BROWN, Clerk of Court

Date of Service:

(To be inserted by officer on copy left with Defendant or other person)

**Service by Facsimile Transmission will be accepted at:

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

DIE DATE
02/19/2017

DOC.TYPE: CHANCERY
CASE NUMBER: 17CH01221
DEFENDANT
PROFESSIONAL TRANSPORTATION
208 S LASALLE ST
CHICAGO, IL 60604
814

SERVICE INF
RM 802

ATTACHED

Summons - Alias Summons (12/31/15) CCG N001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MARY TERRY CARMICHAEL

v.

PROFESSIONAL TRANSPORTATION

No. 2017-CH-01221

Defendant Address:
PROFESSIONAL TRANSPORTATION
208 S. LASALLE ST., SUITE 814
CHICAGO, IL 60606

☑ SUMMONS ☐ ALIAS - SUMMONS

To each defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

☑ Richard J. Daley Center, 50 W. Washington, Room 802, Chicago, Illinois 60602

☐ District 2 - Skokie
5600 Old Orchard Rd.
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2121 Euclid 1500
Rolling Meadows, IL 60008

☐ District 4 - Maywood
Maybrook Ave.
Maywood, IL 60153

☐ District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455

☐ District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60428

☐ Richard J. Daley Center
50 W. Washington, LL-01
Chicago, IL 60602

You must file within 30 days after service of this Summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:
This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than thirty (30) days after its date.

☐ Atty. No.: 25953
Name: BISHOF JOHN S
Atty. for: MARY TERRY CARMICHAEL
Address: 101 N WACKER DR STE 200
City/State/Zip Code: CHICAGO, IL 60606
Telephone: (312) 630-2048
Primary Email Address: jsbishof@jsblegal.com
Secondary Email Address(es):
pgerberich@jsblegal.com

Witness: Thursday, 26 DOROTHY BROWN CLERK OF THE CIRCUIT COURT

DOROTHY BROWN, Clerk of Court SEAL

Date of Service:

(To be inserted by officer on copy left with Defendant or other person)

**Service by Facsimile Transmission will be accepted at:

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

DIE DATE
02/19/2017

DOCTYPE: CHANCERY
CASE NUMBER: 17CH01221
DEFENDANT
PROFESSIONAL TRANSPORTATION
208 S LASALLE ST
CHICAGO, IL 60604
814

SERVICE INF
RM 802

ATTACHED

Chancery DIVISION

Litigant List

Printed on 01/26/2017

Case Number: 2017-CH-01221

Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
MARY TERRY CARMICHAEL				

Total Plaintiffs: 1

Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
PROFESSIONAL TRANSPORTATION	208 S. LASALLE ST., SUITE 814 CHICAGO,	IL 60606		Sheriff-Clerk

Total Defendants: 1

ELECTRONICALLY FILED
1/26/2017 1:27 PM
2017-CH-01221
CALENDAR: 09
PAGE 1 of 4
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

NO. 25953

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY TERRY CARMICHAEL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**No.**
PROFESSIONAL TRANSPORTATION, INC.,	)	
a foreign corporation d/b/a PTI;	)	
	)	
Defendants.	)	

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

Comes now, Plaintiff, **Mary Terry Carmichael**, and for her claims for Declaratory Judgment against the Defendant, **Professional Transportation, Inc.**, a foreign corporation d/b/a **PTI**, states and alleges as follows:

JURISDICTION AND PARTIES

1. That at all times herein material to this lawsuit, Plaintiff, **Mary Terry Carmichael,** was and is a resident of the Calumet City, Cook County, Illinois

2. That at all times material herein, Defendant, **Professional Transportation, Inc.**, a foreign corporation d/b/a **PTI (hereinafter "PTI")** was and is a corporation duly organized and existing under the laws of the State of Indiana, was at all times herein mentioned a common carrier for hire to transport passengers and contracted with Union Pacific Railroad Co. (hereinafter "UPRR") to transport its railroad employees within in the State of Illinois including the county where this action is filed.

3. On November 13, 2010, **Mary Terry Carmichael** was a passenger in defendant

PTI's van. While being transported from one UPRR's rail yard facility to another, the van was struck by a third party vehicle causing plaintiff to sustain injuries. This vehicular collision occurred in the City of Chicago, County of Cook, Illinois.

4. Defendant, PTI was operating as a contract carrier transporting UPRR employees in the course of their employment on a highway in this state in a vehicle designed to carry 15 or fewer passengers. Plaintiff was a UPRR employee and passenger in this vehicle that was involved in the collision.

5. PTI, as a contract carrier in Illinois, is required to maintain underinsured motor vehicle coverage in the amount of not less than $250,000.00 per passenger.

6. PTI, as a contract carrier in Illinois, has a duty to maintain underinsured motor vehicle coverage at least in the amount of $250,000.00 per passenger as required under 625 ILCS 5/8-101.

7. PTI, as a contract carrier in Illinois, has a duty to file with the Secretary of State of Illinois proof of financial responsibility in the amount of at least $250,000.00.

8. PTI, as a contract carrier in Illinois, is legally responsible for any provable damages sustained by plaintiff as a result of the motor vehicle accident of November 13, 2010 which exceed the amount of the insurance policy limits of the responsible party but limited to the PTI's underinsured motor vehicle coverage.

9. The above contentions of plaintiff, are, on information and belief, denied by PTI.

10. By reason of the foregoing, an actual and justiciable controversy exist between the parties and each of them, which may be determined by a judgment or order of this Court. Pursuant to the terms of 735 ILCS § 5/2-701, this Court has the power to declare and adjudicate the rights and

liabilities of the parties hereto under the provisions of 625 ILCS 5/8-101 and to give such other and further relief as may be necessary to enforce the same.

WHEREFORE, Plaintiff, **Mary Terry Carmichael**, prays that this Court enters judgment finding and declaring that the rights of the parties as follows:

A. On November 13, 2010, **PTI** was operating as a contract carrier transporting UPRR employees in the course of their employment on a highway in this state in a vehicle designed to carry 15 or fewer passengers. Plaintiff was a UPRR employee and passenger in this vehicle that was involved in a collision on the same date.

B. **PTI**, as a contract carrier in Illinois, is required to maintain underinsured motor vehicle coverage in the amount of not less than $250,000.00 per passenger.

C. **PTI**, as a contract carrier in Illinois, has a duty to maintain underinsured motor vehicle coverage at least in the amount of $250,000.00 per passenger as required under 625 ILCS 5/8-101.

D. **PTI**, as a contract carrier in Illinois, has a duty to file with the Secretary of State of Illinois proof of financial responsibility in the amount of at least $250,000.00.

E. **PTI**, as a contract carrier in Illinois, is legally responsible for any provable damages sustained by plaintiff as a result of the motor vehicle accident of November 13, 2010 which exceed the amount of the insurance policy limits of the responsible or parties but limited to the **PTI**'s required minimum amount of underinsured motor vehicle coverage of $250,000.

LAW OFFICE OF JOHN BISHOF, P.C.

John S. Bishof Jr.

101 N. Wacker Dr. Suite 200
Chicago, IL 60606
Ph: 312-630-2048
Fax: 312-630-2085
jsbishof@jsblegal.com

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MARY TERRY CARMICHAEL
v.
PROFESSIONAL TRANSP. INC.

No. 2017CH-01221

ORDER

THIS MATTER coming on to be heard at this Court's STATUS CALL and the Court being fully advised

IT IS HEREBY ORDERED that this matter is stayed

IT IS FURTHER ORDERED that this matter is set for status on August 23 2017 at ~~10:00~~ am 9:30

Attorney No.: 213926
Name: John Bishof
Atty. for: PLTF.
Address: 191 N. Wacker (Ste 2100)
City/State/Zip: Chgo IL
Telephone: 312/630-2498

ENTERED:

Dated:

Judge

ENTERED
JUDGE SANJAY TAILOR-1870
MAY 26 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
Appeal No. 1-17-0173 CONSOLIDATED WITH Appeal No. 1-17-0075

MARY TERRY CARMICHAEL,

Plaintiff-Appellant,

vs.

ACE AMERICAN INSURANCE CO., a foreign corporation,

Defendant-Appellee,

and

UNION PACIFIC RAILROAD COMPANY, a foreign corporation; PROFESSIONAL TRANSPORTATION, INC., a foreign corporation d/b/a PTI;

Defendants.

Appeal from: Circuit Court of Cook County, No. 12 CH 38582

Judge Sophia H. Hall

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

PLAINTIFF-APPELLANT MARY TERRY CARMICHAEL'S MOTION TO DISMISS APPEAL NO. 1-17-0173.

NOW COMES Plaintiff-Appellant Mary Terry Carmichael and moves to dismiss Appeal No. 1-17 0173. This appeal was consolidated with Appeal No 1-17-0075 on March 3, 2017. Plaintiff-Appellant Mary Terry Carmichael's motion to dismiss her appeal, No. 1-17-0173, does not affect Appeal No. 1-17-0075.

Respectfully submitted,

Dated: 5/18/17

John S. Bishof, Jr.

Law Office of John Bishof, P.C.
101 N. Wacker Dr. Suite 200
Chicago, IL 60606
312-630-2048
Fax: 312-630-2085
jsbishof@jsblegal.com

CERTIFICATE OF SERVICE

I, John S. Bishof, Jr., certify that I caused copies of the foregoing document, **Plaintiff-Appellant Mary Terry Carmichael Motion to Dismiss Appeal No. 1-17-0173**, to be served upon:

Wendy N. Enerson
Cozen O'Connor
123 North Wacker Dr. Suite 1800
Chicago, IL 60606

George Brant
Judge James Hoban & Fisher, LLC
422 N. Northwest Highway, Suite 200
Park Ridge, IL 60068

Evan Siegel
Assistant Attorney General
100 W. Randolph St. 13th Floor
Chicago, IL 60601

Hugh C. Griffin
Hall Prangle & Schoonveld, LLC
200 South Wacker Drive
Suite 3300
Chicago, IL 60606

by email and depositing in a U.S. Mail Box located at 101 N. Wacker Dr. Chicago, IL 60606, with postage prepaid on May 18, 2017 before the hour of 5:00 p.m.

John S. Bishof, Jr.

625 ILCS 5/Ch. 8 heading)

CHAPTER 8. MOTOR VEHICLES USED FOR TRANSPORTATION OF PASSENGERS

(625 ILCS 5/8-101) (from Ch. 95 1/2, par. 8-101)

Sec. 8-101. Proof of financial responsibility - Persons who operate motor vehicles in transportation of passengers for hire.

(a) It is unlawful for any person, firm or corporation to operate any motor vehicle along or upon any public street or highway in any incorporated city, town or village in this State for the carriage of passengers for hire, accepting and discharging all such persons as may offer themselves for transportation unless such person, firm or corporation has given, and there is in full force and effect and on file with the Secretary of State of Illinois, proof of financial responsibility provided in this Act.

(b) In addition this Section shall also apply to persons, firms or corporations who are in the business of providing transportation services for minors to or from educational or recreational facilities, except that this Section shall not apply to public utilities subject to regulation under "An Act concerning public utilities," approved June 29, 1921, as amended, or to school buses which are operated by public or parochial schools and are engaged solely in the transportation of the pupils who attend such schools.

(c) This Section also applies to a contract carrier transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers. As part of proof of financial responsibility, a contract carrier transporting employees in the course of their employment is required to verify hit and run and uninsured motor vehicle coverage, as provided in Section 143a of the Illinois Insurance Code, and underinsured motor vehicle coverage, as provided in Section 143a-2 of the Illinois Insurance Code, in a total amount of not less than $250,000 per passenger.

(d) This Section shall not apply to any person participating in a ridesharing arrangement or operating a commuter van, but only during the performance of activities authorized by the Ridesharing Arrangements Act.

(e) If the person operating such motor vehicle is not the owner, then proof of financial responsibility filed hereunder must provide that the owner is primarily liable.

(Source: P.A. 94-319, eff. 1-1-06.)

(625 ILCS 5/8-101.1) (from Ch. 95 1/2, par. 8-101.1)

Sec. 8-101.1. Proof of financial responsibility - Persons who operate medical transport vehicles. It is unlawful for any person, firm or corporation, other than a unit of local

government, to operate any medical transport vehicle along or upon any public street or highway in any incorporated city, town or village in this State unless such person, firm or corporation has given, and there is in full force and effect and on file with the Secretary of State, proof of financial responsibility provided in this Code.

If the person operating such motor vehicle is not the owner, then proof of financial responsibility filed hereunder must provide that the owner is primarily liable.

(Source: P.A. 82-949.)

(625 ILCS 5/8-102) (from Ch. 95 1/2, par. 8-102)

Sec. 8-102. Alternate methods of giving proof. Proof of financial responsibility, when required under Section 8-101 or 8 101.1, may be given by filing with the Secretary of State one of the following:

1. A bond as provided in Section 8-103;

2. An insurance policy or other proof of insurance in a form to be prescribed by the Secretary as provided in Section 8-108;

3. A certificate of self-insurance issued by the Director;

4. A certificate of self insurance issued to the Regional Transportation Authority by the Director naming municipal or non-municipal public carriers included therein;

5. A certificate of coverage issued by an intergovernmental risk management association evidencing coverages which meet or exceed the amounts required under this Code.

(Source: P.A. 86-444.)

(625 ILCS 5/8-103) (from Ch. 95 1/2, par. 8 103)

Sec. 8-103. Bond as proof of financial responsibility. 1. A bond of the owner of motor vehicles, subject to the provisions of Section 8-101 or 8-101.1, with a solvent and responsible surety company authorized to do business under the laws of this State as surety thereon; or

2. A bond of such owner, with one or more personal sureties, owning real estate in the State of Illinois, of the value in the aggregate of $250,000 over and above all encumbrances, when approved by the Secretary of State shall be proof of financial responsibility as required by Section 8-101 or 8-101.1.

3. The bond shall not be approved unless accompanied by affidavits of the personal sureties, attached, stating the location, legal description, market value, nature and amount of encumbrances (if any), and the value above all encumbrances of such real estate scheduled to qualify on such bond, and not then unless all requirements for such bond as provided for by this Code have been met.

(Source: P.A. 82-949.)

(625 ILCS 5/8-104) (from Ch. 95 1/2, par. 8-104)

Sec. 8-104. Requirements of bond. 1. A surety bond or real estate bond filed as proof as provided in Section 8-103 shall be in the sum of $250,000 for each motor vehicle operated by the owner providing the motor vehicle is subject to Section 8-101 or 8-101.1.

2. The surety of real estate bond shall provide for the payment of each judgment by the owner of the motor vehicle (giving its manufacturer's name and number and state license number) within 30 days after it becomes final, provided each judgment shall have been rendered against such owner or any person operating the motor vehicle with the owner's express or implied consent, for any injury to or death of any person or for damage to property other than such motor vehicle, resulting from the negligence of such owner, his agent, or any person operating the motor vehicle with his express or implied consent, provided that the maximum payment required of the surety or sureties, on all judgments recovered against an owner hereunder, shall not exceed the sum of $250,000 for each motor vehicle operated, under Section 8-101 or 8-101.1.
(Source: P.A. 82 949.)

(625 ILCS 5/8-105) (from Ch. 95 1/2, par. 8-105)

Sec. 8-105. Action on bond. The surety bond shall, by its terms, inure to the benefit of the person recovering any such judgment, and shall provide that an action may be brought in any court of competent jurisdiction upon such bond by the owner of any such judgment; and such bond, for the full amount thereof shall, by its terms, be a lien for the benefit of the beneficiaries of said bond on such real estate so scheduled, and shall be recorded in the office of the recorder in each county in which such real estate is located.
(Source: P.A. 83-358.)

(625 ILCS 5/8-106) (from Ch. 95 1/2, par. 8-106)

Sec. 8-106. Withdrawal by sureties from bond - Notice.

Any surety or sureties may withdraw from any such bond by serving ten days previous notice in writing upon such owner and the Secretary of State, either personally or by registered mail, whereupon it shall be the duty of such owner to file another bond or insurance policy in accordance with the provisions of this Act. Upon the expiration of said ten days, the Secretary of State shall mark said bond "withdrawn", with the date such withdrawal became effective, and thereupon the liability of the sureties on such bond shall cease as to any injury or damages sustained after the date such withdrawal

became effective.
(Source: P.A. 80-1495.)

(625 ILCS 5/8-107) (from Ch. 95 1/2, par. 8-107)
Sec. 8-107. Authority to require replacement of bond. If, at any time, in the judgment of the Secretary of State, said bond is not sufficient for any good cause, he may require the owner of such motor vehicle who filed the same to replace said bond with another good and sufficient bond or insurance policy, in accordance with the provisions of this Act, and upon such replacement, the liability of the surety or sureties on such prior bond shall cease as to any injury or damage sustained after such replacement.
(Source: P.A. 80-1495.)

(625 ILCS 5/8-108) (from Ch. 95 1/2, par. 8-108)
Sec. 8-108. Insurance policy as bond. A policy of insurance in a solvent and responsible company authorized to do business in the State of Illinois, and having admitted net assets of not less than $300,000 insuring the owner, his agent or any person operating the motor vehicle with the owner's express or implied consent against liability for any injury to or death of any person or for damage to property other than the motor vehicle resulting from the negligence of such owner, his agent or any person operating the vehicle with his express or implied consent, when accepted by the Secretary of State, shall be proof of financial responsibility as required by Section 8-101 or 8-101.1.
(Source: P.A. 82-433.)

(625 ILCS 5/8-109) (from Ch. 95 1/2, par. 8-109)
Sec. 8-109. Requirements of policy. 1. The policy of insurance may cover one or more motor vehicles and for each such vehicle shall insure such owner against liability upon the owner to a minimum amount of $250,000 for bodily injury to, or death of, any person, and $50,000 for damage to property, provided that the maximum payment required of such company on all judgments recovered against an owner hereunder shall not exceed the sum of $300,000 for each motor vehicle operated under the provisions of this Section.

2. The policy of insurance shall provide for payment and satisfaction of any judgment within 30 days after it becomes final rendered against the owner or any person operating the motor vehicle with the owner's express or implied consent for such injury, death or damage to property other than the motor vehicle, and shall provide that suit may be brought in any

court of competent jurisdiction upon such insurance policy by the owner of any such judgment.

3. The insurance policy shall contain a description of each motor vehicle, giving the manufacturer's name and number and state license number.

(Source: P.A. 82-949.)

(625 ILCS 5/8-110) (from Ch. 95 1/2, par. 8-110)

Sec. 8-110. Cancellation of insurance policy - Notice.

1. In the event said policy of insurance be cancelled y the issuing company, or the authority of said issuing company to do business in the State of Illinois be revoked, the Secretary of State shall require the owner who filed the same either to furnish a bond or to replace said policy with another policy according to the provisions of this Act.

2. Said policy of insurance shall also contain a provision that the same cannot be cancelled by the company issuing it without giving ten days notice in writing of such cancellation to the owner and the Secretary of State, either personally or by registered mail.

3. Whenever the issuing company gives such notice of cancellation, the Secretary of State shall, at the expiration of said ten days, mark said insurance policy "Withdrawn" with the date such withdrawal became effective, and thereupon the liability of such company on said policy shall cease as to any injury or damage sustained after the date such withdrawal becomes effective.

(Source: P.A. 76-1586.)

(625 ILCS 5/8-111) from Ch. 95 1/2, par. 8-111)

Sec. 8-111. Proof required after cancellation.

If, at any time, in the judgment of the Secretary of State, said policy of insurance is not sufficient for any good cause, he may require the owner of such motor vehicle who filed the same, to replace said policy of insurance with another good and sufficient bond or insurance policy, in accordance with the provisions of this Act, and upon such replacement, the liability of the company on said insurance policy shall cease as to any injury or damage sustained after such replacement.

(Source: P.A. 76-1586.)

(625 ILCS 5/8 112 (from Ch. 9 1/2, par. 8 112)

Sec. 8-112. When bond on policy to expire.

All bonds and policies of insurance filed with the Secretary of State, under this Act, shall expire not sooner

than the 31st day of December as to a vehicle registered on a calendar year basis and not sooner than the 30th day of June as to a vehicle registered on a fiscal year basis in each year, provided, that the expiration of same shall not terminate liabilities upon such bonds and policies of insurance arising during the period for which the bonds and policies of insurance were filed.
(Source: P.A. 77-99.)

(625 ILCS 5/8-113) (from Ch. 95 1/2, par. 8-113)
Sec. 8 113. Secretary of State to suspend registration certificates, registration plates and registration sticker when bond or policy cancelled or withdrawn. In the event that a bond or policy of insurance is cancelled or withdrawn with respect to a vehicle or vehicles, subject to the provisions of Section 8-101 or 8-101.1, for which the bond or policy of insurance was issued, then the Secretary of State immediately shall suspend the registration certificates, registration plates and registration sticker or stickers of the owner, with respect to such motor vehicle or vehicles, and said registration certificates, registration plates and registration sticker or stickers shall remain suspended and no registration shall be permitted or renewed unless and until the owner of the motor vehicle shall have filed proof of financial responsibility as provided by Section 8-101 or 8-101.1.
(Source: P.A. 82-433.)

(625 ILCS 5/8-114) (from Ch. 95 1/2, par. 8-114)
Sec. 8-114. Issuance of license upon proof of financial responsibility. The Secretary of State shall issue to each person who has in effect proof of financial responsibility as required by Section 8-101 or 8-101.1, a certificate for each motor vehicle operated by such person and included within the proof of financial responsibility. Each certificate shall specify the Illinois registration plate and registration sticker number of the vehicle, a statement that proof of financial responsibility has been filed, and the period for which the certificate was issued.
(Source: P.A. 82-433.)

(625 ILCS 5/8-115) (from Ch. 95 1/2, par. 8-115)
Sec. 8-115. Display of certificate-Enforcement. The certificate issued pursuant to Section 8-114 shall be displayed upon a window of the motor vehicle for which it was issued, in such manner as to be visible to the passengers

carried therein. This Section and Section 8-114 shall be enforced by the State Police, the Secretary of State, and other police officers.
(Source: P.A. 82-433.)

(625 ILCS 5/8-116) (from Ch. 95 1/2, par. 8 116)
Sec. 8-116.
Any person who fails to comply with the provisions of this Chapter, or who fails to obey, observe or comply with any order of the Secretary of State or any law enforcement agency issued in accordance with the provisions of this Chapter is guilty of a Class A misdemeanor.
(Source: P.A. 77-2838.)

Constitution of the State of Illinois

ARTICLE I

BILL OF RIGHTS

SECTION 2. DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.
(Source: Illinois Constitution.)

The US Constitution: 14th Amendment

Fourteenth Amendment to the US Constitution - Rights Guaranteed Privileges and Immunities of Citizenship, Due Process and Equal Protection

AMENDMENT XIV of the UNITED STATES CONSTITUTION

Passed by Congress June 13, 1866. Ratified July 9, 1868.

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPELLATE COURT RECORD – TABLE OF CONTENTS

Mary Terry Carmichael v. Union Pacific Railroad Company, et al.

		Motion to Withdraw Appearance of Counsel	Vol. 1/C89
	6.10.2013	Order (case is continued for case management conference on 7-18-13 at 9:30 a.m. in Rm 2301)	Vol. 1/C93
	7.9.2013	Answer & Affirmative Defenses of ACE American Insurance Company	Vol. 1/C94
	7.18.2013	Notice of Routine Motion	Vol. 1/C106
	7.18.2013	Motion to Withdraw and Substitute Attorneys	Vol. 1/C109
	7.18.2013	Routine Order (Judge, James & Kujawa, LLC granted leave to substitute for Fedota Childers, P.C.)	Vol. 1/C110
	7.18.2013	Case Management Order (Case set for further status on September 4, 2013 at 9:30 a.m.)	Vol. 1/C111
	7.19.2013	Notice of Entry of Order	Vol. 1/C112
	8.22.2013	Appearance (Hugh Griffin on behalf of PTI)	Vol. 1/C113
	8.22.2013	Notice of Filing of Appearance	Vol. 1/C114
	9.4.2013	Order (Case set for status on 10-8-13)	Vol. 1/C116
	9.5.2013	Notice of Entry of Order	Vol. 1/C117
	9.25.2013	Notice of Change of Address (John Bishof's office)	Vol. 1/C120
	9.25.2013	Notice of Filing	Vol. 1/C121
	10.2.2013	Notice of Filing	Vol. 1/C122
	10.2.2013	Defendant Professional Transportation, Inc.'s Amended Answer, Affirmative Defenses and Counter-Claim	Vol. 1/C125
	10.23.2013	Plaintiff Mary Terry Carmichael's Reply to Defendant Professional Transportation, Inc.'s Amended Affirmative Defenses and Answer to Its Counterclaim	Vol. 1/C214
	10.23.2013	Notice of Filing	Vol. 1/C223
	11.12.2013	Case Management Order (Case set for status on 12-12-13 at 9:30 a.m.)	Vol. 1/C225
	11.13.2013	Notice of Entry of Order	Vol. 1/C226
	12.3.2013	Motion Slip	Vol. 1/C229
	12.3.2013	Notice of Motion	Vol. 1/C231
	12.3.2013	State of Illinois' Motion to Dismiss Pursuant to 735 ILCS 5/2-615 and 2-619	Vol. 1/C234
	12.3.2013	Memorandum in Support of State of Illinois' Motion to Dismiss Pursuant to 735 ILCS 5/2-615 and 2-619	Vol. 1/C236
		Record Certification	Vol. 1/C250

	12.13.2016	Record Certification	Vol. 2/C251
	12.3.2013	Answer & Amended Affirmative Defenses of ACE American Insurance Company	Vol. 2/C277
	12.12.13	Order Setting Motion for Hearing (State of Illinois' motion to dismiss set for hearing on 3-12-14 at 10:30 a.m.)	Vol. 2/C288
	12.17.2013	Notice of Entry of Order	Vol. 2/C289
	12.23.2013	Plaintiff Mary Terry Carmichael's Reply to Defendant ACE American Insurance Company's Amended Affirmative Defenses	Vol. 2/C291
	12.23.2013	Notice of Filing	Vol. 2/C297
	2.10.2014	Motion Slip	Vol. 2/C299
	2.10.2014	Notice of Motion	Vol. 2/C301
	2.10.2014	Motion to Amend Professional Transportation, Inc.'s Counterclaim	Vol. 2/C305
	2.10.2014	Memorandum in Opposition to the Illinois Attorney General's Motions to Dismiss Pursuant to 735 ILCS § 2-615 and § 2-619	Vol. 2/C308
	2.10.2014	Notice of Filing	Vol. 2/C347
	2.19.2014	Order (granting PTI's motion to amend its counterclaim to restyle the caption and body to name Jessie White and Lisa Madigan as counter-defendants rather than the State of Illinois)	Vol. 2/C351
	2.19.2014	Order (setting oral argument for 4-15-14 at 10:30 a.m.)	Vol. 2/C352
	2.21.2014	Notice of Entry of Order	Vol. 2/C353
	2.28.2014	Notice of Entry of Order	Vol. 2/C356
	3.21.2014	Notice of Filing	Vol. 2/C359
	3.21.2014	Reply in Support of Defendants' Motion to Dismiss Pursuant to 735 ILCS 5/2-615 and 2-619	Vol. 2/C361
	4.15.2014	Order (Court indicating that it would prefer to defer the constitutional law issues to a later date – additional CMC set for 5-16-14 at 9:30 a.m.)	Vol. 2/C373
	4.17.2014	Notice of Entry of Order	Vol. 2/C374
	5.12.2014	Additional Appearance (Brody Elizabeth Dawson on behalf of Union Pacific Railroad Company)	Vol. 2/C378
	5.15.2014	Motion Slip	Vol. 2/C381
	5.15.2014	Notice of Motion	Vol. 2/C383
	5.15.2014	Unopposed Motion for Extension of Time	Vol. 2/C384
	5.16.2014	Notice of Entry of Order	Vol. 2/C387

	5.16.2014	Order (PTI's motion for Leave to Amend Its Counterclaim to Restyle the Caption is granted)	Vol. 2/C390
	5.18.2014	Order Setting Motion for Hearing (PTI's and Ace's Motions to Dismiss set for hearing on 7-18-14 at 10:30 a.m.)	Vol. 2/C391
	5.16.2014	Defendant Professional Transportation, Inc.'s Third Amended Answer, Affirmative Defenses and Counter-Claim	Vol. 2/C392
	5.22.2014	Notice of Filing	Vol. 2/C481
	5.22.2014	Defendant ACE's Motion to Dismiss	Vol. 2/C483
	5.22.2014	Defendant ACE's Memorandum in Support of Its Motion to Dismiss	Vol. 2/C486
	5.22.2014	Notice of Filing	Vol. 2/C495
	7.24.2014	Plaintiff Mary Terry Carmichael's Response to Defendant ACE's Motion to Dismiss Count II of Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615 and 5/2-619 Under 5/2-619.1	Vol. 2/C499
		Record Certification	Vol. 2/C500
		Record Certification	Vol. 3/C501
	6.19.2014	Plaintiff Mary Terry Carmichael's Response to Defendant PTI's Motion to Dismiss Count I of Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615 and 5/2-619 Under 5/2-619.1	Vol. 3/C506
	7.9.2014	Defendant ACE's Reply in Support of Its Motion to Dismiss	Vol. 3/C517
	9.11.2014	Notice of Filing	Vol. 3/C526
	7.11.2014	Defendant Professional Transportation, Inc.'s Reply in Support of Its Motion to Dismiss Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615 and 5/2-619 Under 5/2-619.1	Vol. 3/C530
	7.18.2014	Notice of Entry of Order	Vol. 3/C540
	7.18.2014	Order (setting hearing on PTI's and Ace's motions to dismiss for July 31, 2014 at 10:30 a.m.)	Vol. 3/C544
	7.29.2014	Plaintiff Mary Terry Carmichael's Surreply to Defendant PTI's Reply to Its Motion to Dismiss Count I of Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615 and 5/2-619 Under 5/2-619.1	Vol. 3/C545
	7.31.2014	Order (continuing hearing on PTI's and Ace's motions to dismiss to 9-26-2014 at 11:00 a.m.)	Vol. 3/C566

8.4.2014	Notice of Entry of Order	Vol. 3/C567
9.26.2014	Order Setting Motion for Hearing (continuing PTI's and Ace's motions to dismiss until 11-13-17)	Vol. 3/C571
10.17.2014	Professional Transportation, Inc.'s Supplemental Memorandum	Vol. 3/C572
10.17.2014	Notice of Filing	Vol. 3/C659
10.28.2014	Notice of Entry of Order	Vol. 3/C662
10.17.2014	Memorandum of Law in Support of Third-Party Plaintiffs Midwestern Car Carriers, Inc. and Whitney Brandon's Response to Third-Party Defendant U.S. Security Associates, Inc.'s Motion for Summary Judgment	Vol. 3/C666
11.7.2014	Plaintiff Mary Terry Carmichael's Response to Defendant PTI's Supplemental Memorandum Supporting Its Claim That Certain Illinois Legislation 625 ILCS 5/8-101(c) is Unconstitutional	Vol. 3/C681
	Record Certification	Vol. 3/C750
	Record Certification	Vol. 4/C751
11.10.2014	Order (setting oral argument for 12-9-14 at 10:30 a.m.)	Vol. 4/C779
11.13.2014	Notice of Entry of Order	Vol. 4/C781
11.21.2014	Notice of Filing	Vol. 4/C785
11.21.2014	Defendant Jesse White's Response to Professional Towing, Inc.'s Supplemental Memorandum	Vol. 4/C787
12.9.2014	Order (Jesse White's motion to dismiss is entered and continued for status on 1-20-15 at 11:00 a.m.)	Vol. 4/C797
12.11.2014	Notice of Entry of Order	Vol. 4/C798
1.30.2015	Order (granting White's motion to dismiss)	Vol. 4/C801
1.30.2015	Decision (granting White's motion to dismiss PTI's Counterclaim)	Vol. 4/C802
2.18.2015	Notice of Entry of Order	Vol. 4/C809
2.25.2015	Notice of Filing	Vol. 4/C812
2.25.2015	Notice of Entry of Order	Vol. 4/C816
2.25.2015	Order (PTI's motion to file 4th amended answer is granted; PTI's motion to strike count I is entered and continued; Ace's motion to strike count III is set for hearing on 3-24-15 at 10:30 a.m.)	Vol. 4/C820
2.25.2015	Defendant Professional transportation, Inc.'s Fourth Amended Answer, Affirmative Defenses and Counter-Claim	Vol. 4/C821

	3.11.2015	Order (Ace's motion to re-set hearing date is granted; Ace's motion to dismiss is set for hearing on 3-30-15 at 10:30 a.m.)	Vol. 4/C923
	3.30.2015	Order (Ace's motion to dismiss is entered and continued; hearing set for 4-22-15 at 11:00 a.m. for ruling on motion)	Vol. 4/C924
	4.7.2015	Notice of Entry of Order	Vol. 4/C925
	4.22.2015	Order (ACE's Motion to Dismiss is granted with prejudice)	Vol. 4/C929
	4.22.2015	Decision (ACE's 2-619 Motion to dismiss Count II is granted)	Vol. 4/C930
	5.4.2015	Order setting Motion for Hearing (setting hearing on PTI's motion to dismiss per 615 and 619 for 5-28-2015)	Vol. 4/C935
	5.5.2015	Notice of Entry of Order	Vol. 4/C936
	5.12.2015	Notice of Filing	Vol. 4/C938
	5.12.2015	Defendant Professional Transportation, Inc.'s Renewed Motion to Dismiss Count I of Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615 and 5/2-619 Under 5/2-619.1	Vol. 4/C943
	5.12.2015	Memorandum in Support of Professional Transportation, Inc.'s Renewed Motion to Dismiss Count I of Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615 and 5/2-619 Under 5/2-619.1	Vol. 4/C945
		Record Certification	Vol. 4/C1000
		Record Certification	Vol. 5/C1001
	5.13.2015	Notice of Entry of Order	Vol. 5/C1003
	5.27.2015	Plaintiff Mary Terry Carmichael's Response to Defendant PTI's Renewed Motion to Dismiss Count I of Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615 and 5/2-619 Under 5/2-619.1	Vol. 5/C1005
	6.4.2015	Order (PTI's motion to dismiss is entered and continued until 7-9-15 at 11:00 a.m.)	Vol. 5/C1020
	6.11.2015	Notice of Entry of Order	Vol. 5/C1021
	7.9.2015	Stipulation to Dismiss	Vol. 5/C1025
	7.9.2015	Order (dismissing Union Pacific Railroad Company with prejudice)	Vol. 5/C1026
	7.9.2015	Order (continuing PTI's motion to dismiss)	Vol. 5/C1027
	7.23.2015	Notice of Entry of Order	Vol. 5/C1028
	7.24.2015	Order (denying PTI's motion to dismiss Count I)	Vol. 5/C1032
	7.24.2015	Decision (denying PTI's motion to dismiss Count I)	Vol. 5/C1033

8.20.2015	Professional Transportation, Inc.'s Motion for Reconsideration or Supreme Court Rule 308 Certification	Vol. 5/C1040
8.20.2015	Notice of Motion	Vol. 5/C1068
8.21.2015	Order Setting Motion for Hearing (setting hearing on PTI's Reconsideration or Rule 308 Certification motion for 9-21-15 at 10:30 a.m.)	Vol. 5/C1071
9.15.2015	Plaintiff Mary Terry Carmichael's Response to Defendant PTI's Motion for Reconsideration or Supreme Court Rule 308 Certification	Vol. 5/C1072
9.16.2015	Notice of Entry of Order	Vol. 5/C1079
9.21.2015	Order (PTI's motion for reconsideration and/or 308 certification is entered and continued to 10-30-15 at 11:00 a.m.)	Vol. 5/C1083
10.7.2015	Notice of Entry of Order	Vol. 5/C1084
10.23.2015	Notice of Motion	Vol. 5/C1089
10.23.2015	Professional Transportation, Inc.'s Motion for a Supreme Court Rule 308 Certification Should PTI Not Prevail on Its Pending Motion for Reconsideration	Vol. 5/C1092
10.29.2015	Amended Notice of Motion	Vol. 5/C1121
10.30.2015	Order (continuing PTI's motion for reconsideration and/or 308 certification until 11-25-15 at 11:00 a.m.)	Vol. 5/C1124
11.25.2015	Order (denying PTI's Motion for Reconsideration and granting PTI's Motion for a Rule 308 Certification)	Vol. 5/C1125
11.30.2015	Order (Court certified an issue for immediate appeal under Supreme Court Rule 308 and sets the matter for status on 1-29-16 at 9:30 a.m.)	Vol. 5/C1126
12.4.2015	Notice of Entry of Order	Vol. 5/C1127
11.30.2015	Order (granting PTI's Motion for Rule 308 Certification)	Vol. 5/C1133
1.25.2016	Agreed Order (continuing status until 2-16-16 at 9:30 a.m.)	Vol. 5/C1135
2.16.2016	Order (continuing status until 3-17-16 at 9:30 a.m.)	Vol. 5/C1136
3.17.2016	Case Management Order (set for 4-26-16 at 9:30 a.m.)	Vol. 5/C1137
3.17.2016	Notice of Entry of Order	Vol. 5/C1138

	4.20.2016	Certificate of Service (for Defendants' Supplemental Interrogatories and Supplemental Request for Production)	Vol. 5/C1142
	4.26.2016	Case Management Order (set for 6-2-16 at 9:30 a.m.)	Vol. 5/C1144
	4.27.2016	Notice of Entry of Order	Vol. 5/C1145
	6.2.2016	Case Management Order (Final – set for 7-11-16 at 9:30 a.m.)	Vol. 5/C1147
	6.10.2016	Notice of Entry of Order	Vol. 5/C1148
	7.5.2016	Notice of Filing	Vol. 5/C1150
	7.5.2016	Defendant's Request to Admit Directed to Plaintiff	Vol. 5/C1153
	7.11.2016	Case Management Order (set for 8-12-16 at 9:30 a.m.)	Vol. 5/C1156
	7.19.2016	Notice of Subpoena for Records (to Tasha L. Cluke, Cluke Tax Services)	Vol. 5/C1157
	8.12.2016	Case Management Order (set for 8-23-16 at 9:30 a.m.)	Vol. 5/C1159
	8.23.2016	Order (transferring case to Law Division for trial assignment)	Vol. 5/C1160
	8.23.2016	Transfer Order (transferred to Law Division)	Vol. 5/C1161
	10.17.2016	Notice of Entry of Order	Vol. 5/C1162
	9.14.2016	Order (setting trial on 12-13-16)	Vol. 5/C1171
	10.18.2016	Mandate of the Appellate Court	Vol. 5/C1172
	1.13.2016	Appellate Court Order (denying PTI's Petition for Leave to Appeal)	Vol. 5/C1174
	10.18.2016	Appellate Court Notice	Vol. 5/C1175
	12.13.2016	Order (dismissing case without prejudice upon Plaintiff's motion to voluntarily dismiss this matter without prejudice)	Vol. 5/C1176
	1.6.2017	Notice of Appeal (PTI appeals from the January 30, 2015 Decision of the Circuit Court of Cook County)	Vol. 5/C1177
	1.11.2017	Notice of Appeal (Plaintiff appeals Circuit Court's order entered on April 22, 2015)	Vol. 5/C1187
	1.20.2017	Request for Preparation of Record on Appeal (PTI)	Vol. 5/C1196
	1.24.2017	Request for Preparation of Record on Appeal	Vol. 5/C1197
		Record Certification	Vol. 5/C1198
		Record Certification	Vol. 6/1
	2.17.2017	Stipulation to File Report of Proceedings Without Further Certification	Vol. 6/2
	2.17.2017	Notice of Filing and Proof of Service	Vol. 6/4

	2.17.2017	Report of Proceedings December 9, 2014	Vol. 6/8
		Record Certification	Vol. 6/54

SUPPLEMENTAL RECORD

	6.15.2017	Notice of Filing	1
	5.16.2014	PTI's Motion to Dismiss Count I of Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615 and 5/2-619 Under 5/2-619.1	8

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
Docket No. 1-15-3441

MARY TERRY CARMICHAEL,

Plaintiff-Respondent,

v.

PROFESSIONAL TRANSPORTATION, INC., a foreign corporation d/b/a PTI,

Defendant-Petitioner

and

UNION PACIFIC RAILROAD COMPANY; a foreign corporation;
and ACE AMERICAN INSURANCE CO., a foreign corporation,

Defendants.

PROFESSIONAL TRANSPORTATION, INC., a foreign corp d/b/a PTI;

Counter-Plaintiff/Defendant,

v.

MARY TERRY CARMICHAEL,

Counter-Defendant/Plaintiff,

and

JESSE WHITE, ILLINOIS SECRETARY OF STATE.

Counter-Defendant.

Rule 308 Application for Leave to Appeal from the
Circuit Court of Cook County, Illinois, No. 12 CH 38582
The Honorable **Sophia H. Hall**, Judge Presiding

PLAINTIFF-RESPONDENT'S ANSWER TO PETITION FOR REHEARING

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No: 15-3441
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MARY TERRY CARMICHAEL,
Plaintiff-Respondent,

v.

PROFESSIONAL TRANSPORTATION, INC., a foreign corporation d/b/a PTI,
Defendant-Petitioner

and
UNION PACIFIC RAILROAD COMPANY; a foreign corporation;
and ACE AMERICAN INSURANCE CO., a foreign corporation,
Defendants.

PROFESSIONAL TRANSPORTATION, INC., a foreign corp d/b/a PTI;
Counter-Plaintiff/Defendant,

v.

MARY TERRY CARMICHAEL,
Counter-Defendant/Plaintiff,

and

JESSE WHITE, ILLINOIS SECRETARY OF STATE.
Counter-Defendant.

DEFENDANT-PETITIONER'S PETITION FOR REHEARING

Pursuant to Illinois Supreme Court Rule 308 (c) and order entered on February 10, 2016 by this Court, plaintiff, Mary Terry Carmichael, answers defendant, Professional Transportation Inc.'s ("PTI") petition for rehearing. (Appx. 1). On January 13, 2016, this Court entered an order denying PTI's Rule 306 application finding that, "Defendant-Petitioner has not sufficiently established that an immediate appeal may materially advance the ultimate termination of the litigation." (Appx. 2).

ANSWER

PTI cites *Voss v. Lincoln Mall Mgmt., Co.*, 166 Ill. App. 3d 442 (1st Dist. 1988), a case which discussed all the factors a reviewing court should examine before deciding on whether a Rule 308 Application should be granted.

1. Is There A Substantial Ground For Difference Of Opinion On The Question Of Law That Was Certified By The Trial Court?

Both parties are adamant that their respective positions are correct. The trial court found in favor of the plaintiff after extensive briefing and argument. The issue of whether a private right of action is implied when a contract carrier transporting employees fails to follow the law, specifically, 625 ILCS 5/8-101(c) of the Illinois Vehicle Code, certainly is a question of law. Although the issue of whether a statute implies a private right of action has been decided in many cases involving other statutes, the present case is the first case that involves 625 ILCS 5/8-101(c). This is a case of first impression.

2. Has Defendant-Petitioner Sufficiently Established That An Immediate Appeal May Materially Advance The Ultimate Termination Of The Litigation?

Although defendant represented in the **INTRODUCTION** section of its Petition for Rehearing that the Circuit Court "found that an immediate resolution of the question of law by a court of review would materially advance the ultimate termination of the litigation[.]," a closer look at the Order the Circuit Court entered on November 30, 2015 clearly demonstrates that defendant substituted "would" for the word "may."

What type of case would the reviewing court consider to be a candidate for immediate review? Illinois decisions have not been very helpful in instructing how to determine which cases "may" fit this category. *Voss*, 166 Ill. App. 3d at 445. However, *Renshaw v. Gen. Tele. Co. of Ill.*, 112 Ill. App. 3d 58, 64 (5th Dist. 1983) does provide some guidance on what type of case it would not grant a Rule 308 appeal even though there was a substantial ground for difference of opinion. *Renshaw* was a case seeking damages for personal injuries. The court further noted that there were few parties and the issues were no more complicated than what one usually finds in a personal injury case. Also, a trial would would be of short duration. Based on the foregoing *Renshaw* held that the case was not a candidate for a Rule 308 appeal.

In the present case, there is a single plaintiff and only one active defendant. Basically it is a prove-up for plaintiff's damages. Defendant fills the shoes of the insurer of the uninsured and under-insured motorist coverage in the amount of $250,000, the amount of insurance it was required to have while operating as a contract carrier of employees. In the

underlying Law Division case, PTI and plaintiff's employer, Union Pacific RR, all agreed that the at-fault driver who collided with the PTI vehicle was solely responsible for the accident which would trigger the UIM insurance coverage that PTI should have obtained. (Page 1 - 2, Defendant's Petition for Rehearing).

Principles that generally apply to Rule 308 would indicate that the reviewing court should be very selective in granting an interlocutory appeal. "limited to certain 'exceptional' circumstances; the rule should be strictly construed and sparingly exercised." (*Voss*, 166 Ill. App. 3d at 445).

There is no question that if both defendant's Petition for Rehearing and its application for a Rule 308 certification are granted and this Court reverses the trial court's decision, the case would be dismissed and temporarily terminated. Depending on whether plaintiff sought leave to appeal this Court's hypothetical reversal of trial Court's decision, it is questionable that granting an immediate appeal would materially advance the ultimate termination of litigation of this matter. Thus, even if the defendant eventually prevailed in its Rule 308 appeal, there is no assurance that such a ruling would likely get us to the end of this litigation any sooner than if we tried the case and an appeal followed.

Defendant previously maintained that any attempt for civil recovery would be, *inter alia*, "replete with delays."(S.R. 107) " [A] private remedy would raise numerous collateral issues that would actually delay and burden any further recovery against PTI." (S.R. 110). Plaintiff had previously suggested to the trial Court that litigating the present case presented the same issues that have already been addressed in tort litigation.(S.R. 158). The trial court agreed and was not persuaded by defendant's argument. (S.R. 4 and 8).

If plaintiff's case survives defendant's immediate appeal, either by this Court's ruling or by further review, the trial Court recognized that still there may be many collateral issues that the Court needs to resolve during the course of trial. Judicial economy would strongly support that any review of this case and the issues the trial Court resolved would be better reviewed after trial. Any review of issues not yet decided would appear to be deemed to be advisory and a compelling reason for denying defendant's application for a Rule 308 appeal.

Since the reviewing court should be very selective in granting an interlocutory appeal, one would be hard pressed to categorized the present case as one that is any different than any other case in which a summary judgement or dismissal motion was denied. Moreover, plaintiff submits there is only a remote possibility that such a ruling would be reversed on appeal.

CONCLUSION

For the foregoing reasons plaintiff requests this Court to deny defendant's Petition for Rehearing and allow plaintiff to proceed to trial.

Respectfully submitted,

By: _____
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SUPREME COURT RULE 341 (c) CERTIFICATE OF COMPLIANCE

I, John S. Bishof, Jr. certify that this Answer to Petition for Rehearing conforms to the requirements of Rules 367 and 341 (a) and (b). The length of this Answer, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, certificate of service, is 4 pages.

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STATE OF ILLINOIS
99th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

138th Legislative Day 5/27/2016

Clerk Hollman: "Senate Bill 3149, a Bill for an Act concerning revenue. This Bill was read a second time on a previous day. No Committee Amendments. No Floor Amendments. No Motions are filed."

Speaker Lang: "Third Reading. Senate Bills-Third Reading, page 5, Senate Bill 2216, Mr. Hoffman. Out of the record. Senate Bill 2882, Mr. Hoffman. Please read the Bill."

Clerk Hollman: "Senate Bill 2882, a Bill for an Act concerning transportation. Third Reading of this Senate Bill."

Speaker Lang: "Mr. Hoffman."

Hoffman: "Thank you, Mr. Speaker. Ladies and Gentlemen of the House, this Bill is the adoption of language that was amendatorily vetoed last year. It would increase the amount of coverage for hit and run and… for uninsured vehicles in a contract carrier transportation of employee situation where they're transporting railroad employees back and forth from the end of the line from $250 thousand per passenger to $500 thousand per passenger. This would reflect the Governor's Amendatory Veto of last year. I know of no opposition."

Speaker Lang: "Mr. Sandack."

Sandack: "Thank you. Will the Gentleman yield?"

Speaker Lang: "Gentleman yields."

Sandack: "Jay, I heard the last part, but I want to make sure it's right. This is identical to the AV from last Session?"

Hoffman: "Yes. We took the Governor's language and put it into a Bill."

Sandack: "Okay. So, he… obviously, the Governor's Office is a proponent. I do see some opponents. Do you know or could you… or at least there appears to be some opponents. Can you hit

on what it is the opposition still contends is wrong with the Bill or why they're opposed?"

Hoffman: "I didn't… I don't know… my analysis doesn't show any opponents."

Sandack: "So, was this…"

Hoffman: "The only opponent that would be potentially against it would be the Railroad Association and it's my understanding, they're okay with the Bill."

Sandack: "All right. I show Property Casualty Insurers Association of America and CNA Financial. Is that an earlier run?"

Hoffman: "I didn't know that they were an opponent."

Sandack: "They have not approached you?"

Hoffman: "No. They have not."

Sandack: "Okay. Thank you."

Speaker Lang: "Those in favor of the Bill will vote 'yes', opposed 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Mr. Clerk, please take the record. On this question, there are 106 voting 'yes', 1 voting 'no'. And this Bill, having received the Constitutional Majority, is hereby declared passed. Senate Bill 2972, Mr. Davis. Please read the Bill."

Clerk Hollman: "Senate Bill 2972, a Bill for an Act concerning public employee benefits. Third Reading of this Senate Bill."

Speaker Lang: "Mr. Davis."

Davis, W.: "Thank you very much, Mr. Speaker. Ladies and Gentlemen, Senate Bill 2972 would allow Members who receive a pension of less than $100 per month choose to take a refund of their member contributions in lieu of taking the actual pension. Be more than happy to answer any questions."

STATE OF ILLINOIS
100th GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

43rd Legislative Day 5/11/2017

PRESIDING OFFICER: (SENATOR HARMON)

Senator Sandoval.

SENATOR SANDOVAL:

Thank you, Mr. President, Members of the Senate. Senate Bill 1681 requires that every rail carrier that contracts with a contract carrier for the transportation of its employees must verify that the contract carrier has a hit and run, uninsured, and underinsured motor vehicle coverage. This is an issue -- a matter for the transportation -- United Transportation Union. There is no opposition.

PRESIDING OFFICER: (SENATOR HARMON)

Is there any discussion? Seeing none, the question is, shall Senate Bill 1681 pass. All those in favor, vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 54 voting Aye, none voting No, none voting Present. And Senate Bill 1681, having received the required constitutional majority, is declared passed. Mr. Secretary, Messages from the House.

SECRETARY ANDERSON:

A Message from the House by Mr. Mapes, Clerk.

Mr. President - I am directed to inform the Senate that the House of Representatives has adopted the following joint resolution, in the adoption of which I am instructed to ask the concurrence of the Senate, to wit:

House Joint Resolution 24.

Offered by Senator Bertino-Tarrant and adopted by the House, May 11th, 2017. Timothy D. Mapes, Clerk of the House. It is substantive, Mr. President.

2006 Ill. Atty. Gen. Op. 005 (Ill.A.G.), 2006 WL 3956018

Office of the Attorney General

State of Illinois
File No. 06-005
December 29, 2006

JUDICIAL SYSTEM:
***1** Residency Requirements for Resident Judges After Circuit-wide Retention Election

Mr. William A. Sunderman
Chairman
Judicial Inquiry Board
100 West Randolph, Suite 14-500
Chicago, Illinois 60601-3233

Dear Mr. Sunderman:
I have your letter inquiring whether "resident judges," who are circuit court judges initially elected from a particular county or subcircuit within a judicial circuit, must continue to reside in that county or subcircuit after winning a circuit-wide retention election. For the following reasons, it is my opinion that after winning a circuit-wide retention election, resident judges may reside anywhere within that circuit.

BACKGROUND

Article VI of the Illinois Constitution of 1970 sets forth the basic structure of the judiciary and the qualifications necessary to be a judge, including a residency requirement. Specifically, article VI, section 11, of the Constitution, entitled Eligibility for Office, provides, in pertinent part:
No person shall be eligible to be a Judge or Associate Judge *unless he is* a United States citizen, a licensed attorney-at-law of this State, and *a resident of the unit which selects him.* (Emphasis added.) Ill. Const. 1970, art. VI, § 11.

To understand the "unit" in which a circuit court judge must reside, it is necessary to understand the geographical area from which a circuit court judge is selected.

Illinois is currently divided into five judicial districts. Ill. Const. 1970, art. VI, § 2; 705 ILCS 20/0.01 *etseq.* (West 2004). [1] Those judicial districts are in turn divided into judicial circuits, consisting of one or more counties. Ill. Const. 1970, art. VI, § 7; 705 ILCS 35/1 (West 2004). Pursuant to subsection 7(a) of article VI of the Constitution, the General Assembly "may provide for the division of a circuit for the purpose of selection of Circuit Judges and for the selection of Circuit Judges from the circuit at large." Ill. Const. 1970, art. VI, § 7(a). The General Assembly has determined that circuit court judges in Illinois may be elected in one of two ways: (1) either by the circuit at large, that is, by the voters of the entire circuit; or (2) from a subcircuit or a particular county of a judicial circuit. [2] *See Thies v. State Board of Elections*, 124 Ill. 2d 317, 319 (1988); *seealso* ILCS Ann., 1970 Ill. Const., art. VI, § 7, Constitutional Commentary, at 428 (Smith-Hurd 1993). Consequently, the "unit" that initially selects a circuit court judge may be an entire judicial circuit, a subcircuit of the judicial circuit, or a particular county within a judicial circuit. *SeeThies*, 124 Ill. 2d at 319.

An incumbent circuit court judge may seek retention of his or her office through a retention election. *See* Ill. Const. 1970, art. VI, § 12(d). Article VI, section 12, of the Constitution sets forth the procedures for the retention of judges and provides, in pertinent part:

*2 *The retention elections shall be conducted* at general elections in the appropriate Judicial District, for Supreme and Appellate Judges, and *in the circuit for Circuit Judges.* (Emphasis added). Ill. Const. 1970, art. VI, § 12(d); *see also* 10 ILCS 5/7A-1 (West 2004).

Under this provision, although a resident judge is initially elected solely by the voters of a single subcircuit or county within a circuit, that judge is retained by the voters of the entire judicial circuit, not the particular subcircuit or county. ILCS Ann., 1970 Ill. Const., art. VI, § 12, Constitutional Commentary, at 462 (Smith-Hurd 1993).

Not withstanding the differences in the geographical units that initially elect a circuit court judge and those that retain that judge, various provisions of the Circuit Courts Act (705 ILCS 35/0.01 *etseq.* (West 2004)) require that a resident judge elected from a subcircuit must reside in that subcircuit and "continue to reside in that subcircuit *as long as he or she holds that office.*" (Emphasis added.) *See*705 ILCS 35/2f(e), 2f-6(d) (West 2004); 705 ILCS 35/2f-2(d), 2f-4(d), 2f-5(d) (West 2004), as amended by Public Act 94-727, effective February 14, 2006; 705 ILCS 35/2f-9(d) (West 2005 Supp.). Other provisions relating to circuit courts mandate that a judge be a "resident" of a particular county, but do not contain language requiring continued residency. *See,e.g.*, 705 ILCS 35/2d(1), 2f-7, 2g, 2i, 2j (West 2004).

The Illinois Supreme Court addressed the issue of statutorily-created, judicial residency requirements in *Thies v. State Board of Elections.* In *Thies*, amendments to the Circuit Courts Act provided that a candidate for a newly-created judgeship in Champaign County had to be a resident of Champaign County, but had to run for the office throughout the entire Sixth Judicial Circuit, which was comprised of multiple counties.

The *Thies*Court concluded that the General Assembly lacked the authority to require a judicial candidate to reside in a particular part of the unit that selected him. The Court reasoned:

> Because Public Act 85-866, as amended by Public Act 85-903, attempts to add the qualification that candidates for certain judgeships have to be residents of particular counties and nevertheless be elected from the circuit at large, under the construction we place on article VI, sections 7(a) and 11, it is unconstitutional. As noted above, there is an arguable ambiguity contained in article VI, section 11. However, it would seem logical that under section 11, if the unit that selects the judge is the circuit, then any person otherwise qualified who lives anywhere in the circuit is qualified. Similarly, if the unit that selects the judge is a county or a division of the circuit, then any otherwise qualified person who resides within the unit would be eligible for the judgeship. The legislature cannot require the additional qualification that the candidate reside in a particular part of the unit which selects the judge. Furthermore, article VI, section 7(a), cannot be viewed as a grant of power to the legislature to add qualifications to article VI, section 11. That would be a strained construction and would lead to a result not contemplated by the delegates to the constitutional convention. *Thies*, 124 Ill. 2d at 325-26.

*3 As the *Thies*Court noted, where the Constitution prescribes qualifications for an office, its declaration is conclusive of the whole matter, and the General Assembly is without authority to change or add to the qualifications unless the Constitution gives it the power. *See Thies*, 124 Ill. 2d at 325; *see also Cusack v. Howlett*, 44 Ill. 2d 233, 242-43 (1969); *People ex rel. Nachman v. Carpentier*, 30 Ill. 2d 475, 478 (1964), quoting *People ex rel. Hoyne v. McCormick*, 261 Ill. 413, 423-24 (1913).

ANALYSIS

Statutory Provisions

To avoid any potential constitutional issue, you have suggested that the phrase "holds that office" in various provisions of the Circuit Courts Act (*see* 705 ILCS 35/2f(e)[3] 2f-6(d) (West 2004); 705 ILCS 35/2f-2(d), 2f-4(d), 2f-5(d) (West 2004), as amended by Public Act 94-727, effective February 14, 2006; 705 ILCS 35/2f-9(d) (West 2005 Supp.)) may be interpreted to apply only to the term of office in which the circuit court judge was elected from the subcircuit. It would then follow that the statutory provisions would not apply to retention elections in which circuit court judges are elected by the entire judicial circuit, thereby avoiding any potential constitutional issue. After reviewing the pertinent statutory provisions and the corresponding legislative history, I cannot read the phrase "holds that office" to apply only to the term of office in which the circuit court judge was elected from the subcircuit in order to avoid the constitutional issue.

Under the plain language of the various provisions of the Circuit Courts Act, a resident judge elected from a subcircuit must reside in that subcircuit and "continue to reside in that subcircuit as long as he or she holds that office." *See*705 ILCS 35/2f(e), 2f-6(d) (West 2004); 705 ILCS 35/2f-2(d), 2f-4(d), 2f-5(d) (West 2004), as amended by Public Act 94-727, effective February 14, 2006; 705 ILCS 35/2f-9(d) (West 2005 Supp.). The phrase "holds that office" clearly refers to the office of circuit court judge, not merely to the initial term of office in which the circuit court judge was elected from the subcircuit. Nothing in the language of the various provisions of the Circuit Courts Act supports the conclusion that the phrase "holds that office" refers merely to the initial term of office in which the circuit court judge was elected from the subcircuit. To find otherwise would read into the language of the Circuit Courts Act an exception, limitation, or condition that the General Assembly did not express. *See Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 426 (2002).

Even if the residency language of subsections 2f(e), 2f-2(d), 2f-4(d), 2f-5(d), 2f-6(d) and 2f-9(d) of the Circuit Courts Act was unclear regarding the office to which the provisions refer and could be read to apply only to the initial term of office for a circuit court judge, the legislative history of section 2f belies such an interpretation. The legislative debates of section 2f indicate that the General Assembly intended for subcircuit judges to continue to reside in the subcircuit after being retained by a circuit-wide retention election:

*4 Young, A.: Does the language of Section 2, (f)...(e) on page 18, lines 21 through 23 of House Amendment #2, require a judge to remain a resident of the subcircuit from which he or she was elected as long as he or she holds that office?

Williams: Yes. *Once elected, the resident judge must continue to reside in that subcircuit as long as he or she serves in that position even when he or she is on the ballot for retention.* (Emphasis added.) Remarks of Rep. Williams, November 29, 1990, House Debate on Senate Bill No. 543, at 115.

Based on the legislative history of section 2f, it is clear that the General Assembly intended the residency requirements of section 2f to apply to judges retained through a circuit-wide election. I must give a consistent interpretation to the other provisions in the Circuit Courts Act requiring residency in subcircuits, because these provisions contain similar language. *See*705 ILCS 35/2f-6(d) (West 2004); 705 ILCS 35/2f-2(d), 2f-4(d), 2f-5(d) (West 2004), as amended by Public Act 94-727, effective February 14, 2006; 705 ILCS 35/2f-9(d) (West 2005 Supp.). Under the principles of statutory construction, sections of the same statute should be considered *inparimateria*, and each section should be construed with every other part or section of the statute to produce a harmonious whole. *St. Paul Fire & Marine Insurance Co. v. Smith*, 337 Ill. App. 3d 1054, 1060 (2003), *appealdenied*, 205 Ill. 2d 646 (2003). Consequently, I cannot read the phrase "holds that office" to apply only to the term of office in which the circuit court judge was elected from the subcircuit to avoid the constitutional issue.[4]

Constitutional Provisions

Having determined that your inquiry cannot be resolved based on a construction of the statutory language, I turn to the constitutional issue. Article VI, section 11, of the Constitution provides that a person is eligible to be a judge if "he is a United States citizen, a licensed attorney-at-law of this State, and *a resident of the unit which selects him.*" (Emphasis added.) Ill. Const. 1970, art. VI, § 11. Pursuant to article VI, section 12(d), of the Constitution, retention elections "shall be conducted * * * in the circuit for Circuit Judges." Ill. Const. 1970, art. VI, § 12(d); *see* 1991 Ill. Att'y Gen. Op. 204 (applying eligibility requirements of article VI, section 11, to retention elections).[5] Reading sections 11 and 12(d) together, for a circuit court judge who has won retention by the full judicial circuit, the unit selecting the judge is the entire judicial circuit, and the judge may reside anywhere within that circuit, notwithstanding the fact that the judge was initially elected by the voters in a subcircuit or particular county of a judicial circuit. *See Thies*, 124 Ill. 2d at 325-26.

Because the Constitution prescribes residency requirements for circuit court judges retained by a circuit-wide election, the General Assembly cannot change or add to these qualifications unless the Constitution authorizes it to do so. ArticleVI authorizes the General Assembly to provide for the division of judicial circuits for the purpose of the selection of judges (Ill. Const. 1970, art. VI, § 7(a)) and designates a number of other matters, such as the number of circuit court judges in a circuit, upon which the General Assembly may act (Ill. Const. 1970, art. VI, §§ 7(b), 8, 9, 12(e), 14, 15). The Constitution, however, does not authorize the General Assembly to prescribe additional residency requirements for circuit court judges retained by circuit-wide election. Moreover, as the *Thies*Court held, article VI, section 7(a), which provides for the division of the circuits for the selection of circuit court judges, cannot be viewed as a grant of power to the General Assembly to impose qualifications in addition to those set forth in article VI, section 11, nor can it be found to have conferred power on the General Assembly to impose qualifications in addition to those set forth in article VI, section 12. It necessarily follows that the General Assembly may not require circuit court judges to reside in a subcircuit or particular county of a judicial circuit after having won a circuit-wide retention election, and that a statutory provision seeking to do so would conflict with the Constitution. *See O'Brien v. White*, 219 Ill. 2d 86, 100 (2006) (the General Assembly cannot enact legislation that conflicts with specific provisions of the Illinois Constitution, unless the Constitution specifically grants the General Assembly that authority); *see also Thies*, 124 Ill. 2d at 325-26.

CONCLUSION

*5 Therefore, it is my opinion that a "resident judge," who is initially elected from a single county or subcircuit within a judicial circuit, may reside anywhere within that circuit after winning a circuit-wide retention election.

Very truly yours,

Lisa Madigan
Attorney General

Footnotes

1 Although the Judicial Districts Act was repealed by Public Act 89-719, effective March 7, 1997, this Public Act was declared unconstitutional in *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65 (1998). Therefore, the Judicial Districts Act remains in effect.

2 In the Circuit Court of Cook County, resident circuit court judges are elected solely from subcircuits. 705 ILCS 35/0.01 *etseq.* (West 2004); 705 ILCS 50/1 *etseq.* (West 2004).

3 For example, section 35/2f(e) of the Circuit Courts Act provides: "A resident judge elected from a subcircuit shall continue to reside in that subcircuit as long as he or she holds that office." 705 ILCS 35/2f(e) (West 2004).

4 In contrast, other provisions in the Circuit Courts Act mandate that a judge be a "resident of and elected" from a particular county, but do not contain language requiring continued residency. *See, e.g.*, 705 ILCS 35/2d(1), 2f-7, 2g, 2i, 2j (West 2004). Because judges are elected from a particular county only when they are initially elected, and not during retention elections, the General Assembly must have intended that these county residency requirements apply to a judge only during his or her initial term of office and not after being retained. Therefore, no constitutional issue is presented as to these provisions.

5 Under section 7A-1 of the Election Code (10 ILCS 5/7A-1 (West 2004)), retention elections of circuit judges are conducted at general elections on a circuit-wide basis. Circuit judges receiving an affirmation vote of three-fifths of the electors voting on the question are retained.

2006 Ill. Atty. Gen. Op. 005 (Ill.A.G.), 2006 WL 3956018

End of Document

SUPREME COURT OF ILLINOIS

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September 26, 2018

In re: Mary Terry Carmichael, Appellant, v. Union Pacific Railroad Company et al. (Professional Transportation, Inc., etc., Appellee). Appeal, Appellate Court, First District.
123853

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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Clerk of the Court

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October 23, 2018

Evan Gregg Safran Siegel
Office of the Illinois Attorney General
100 W. Randolph Street, 13th Floor
Chicago, IL 60601

In re: Carmichael v. Professional Transportation, Inc.
123853

Today the following order was entered in the captioned case:

Motion by Jesse White, Illinois Secretary of State, for leave to intervene as Appellant. Denied without Prejudice to re-file based upon constitutional arguments, if any, raised in appellee's brief or request for cross-relief.

Order entered by Justice Theis.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

cc: Elizabeth Ainsworth Graham
George Harold Brant
Hugh C. Griffin
John Stephan Bishof, Jr.
Wendy Hayes Enerson

BRT

JULY 17, 1968

AGREEMENT

Dated July 17, 1968

BETWEEN RAILROADS REPRESENTED BY THE

NATIONAL RAILWAY LABOR CONFERENCE

and the

EASTERN, WESTERN AND SOUTHEASTERN

CARRIERS CONFERENCE COMMITTEES

and the employees of such railroads

represented by the

BROTHERHOOD OF RAILROAD TRAINMEN

C 853 A 1

(ii) An employee whose birthday falls on February 29, may, on other than leap years, by giving reasonable notice to his supervisor, have February 28 or the day immediately preceding the first day during which he is not scheduled to work following February 28 considered as his birthday for the purposes of this Article. If an employee's birthday falls on one of the seven listed holidays, he may, by giving reasonable notice to his supervisor, have the following day or the day immediately preceding the first day during which be is not scheduled to work following such holiday considered as his birthday for the purposes of this Article.

(d) When one or more designated holidays fall during the vacation period of the employee, his qualifying days for holiday pay purposes shall be his workdays immediately preceding and following the vacation period. In road service, lost days preceding or following the vacation period due to the away-from-home operation of the individual's run shall not be considered to be work-days for qualifying purposes.

(e) Not more than one time and one-half payment will be allowed, in addition to the "one basic day's pay at the pro rata rate," for service performed during a single tour of duty on a holiday which is also a work day, a vacation day, and/or the Employee's Birthday.

ARTICLE XI - PAYMENTS TO EMPLOYEES INJURED UNDER CERTAIN CIRCUMSTANCES

Where employees sustain personal injuries or death under the conditions set forth in paragraph (a) below, the carrier will provide and pay such employees, or their personal representative, the applicable amounts set forth in paragraph (b) below, subject to the provisions of other paragraphs in this article.

(a) Covered Conditions:

This Article is intended to cover accidents involving employees covered by this agreement while such employees are riding in, boarding, or alighting from off-track vehicles authorized by the carrier and are

(1) deadheading under orders or

(2) being transported at carrier expense.

(b) Payments to be Made:

In the event that any one of the losses enumerated in subparagraphs (1), (2) and (3) below results from an injury sustained directly from an accident covered in paragraph (a) and independently of all other causes and such loss occurs or commences within the time limits set forth in subparagraphs (1), (2) and (3) below, the carrier will provide, subject to the terms and conditions herein contained, and less any amounts payable under Group Policy Contract GA-23000 of The Travelers Insurance Company or any other medical or insurance policy or plan paid for in its entirety by the carrier, the following benefits:

C 854 12

(1) Accidental Death or Dismemberment

The Carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	$100,000
Loss of Both Hands	100,000
Loss of Both Feet	100,000
Loss of Sight of Both Eyes	100,000
Loss of One Hand and One Foot	100,000
Loss of One Hand and Sight of One Eye	100,000
Loss of One Foot and Sight of One Eye	100,000
Loss of One Hand or One Foot or Sight of One Eye	50,000

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrevocable loss of sight.

No more than $100,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident.

(2) Medical and Hospital Care

The carrier will provide payment for the actual expense of medical and hospital care commencing within 120 days after an accident covered under paragraph (a) of injuries incurred as a result of such accident, subject to limitation of $3,000 for any employee for any one accident, less any amounts payable under Group Policy Contract GA-23000 of The Travelers Insurance Company or under any other medical or insurance policy or plan paid for in its entirety by the carrier.

(3) Time Loss

The carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) hereof and who is unable to work as a result thereof commencing within 30 days after such accident 80% of the employee's basic full-time weekly compensation from the carrier for time actually lost, subject to a maximum payment of $100.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act.

A-3

C 855

(4) Aggregate Limit

The aggregate amount of payments to be made hereunder is limited to $1,000,000 for any one accident and the carrier shall not be liable for any amount in excess of $1,000,000 for any one accident irrespective of the number of injuries or deaths which occur in or as a result of such accident. If the aggregate amount of payments otherwise payable hereunder exceeds the aggregate limit herein provided, the carrier shall not be required to pay as respects each separate employee a greater proportion of such payments than the aggregate limit set forth herein bears to the aggregate amount of all such payments.

(c) Payment in Case of Accidental Death:

Payment of the applicable amount for accidental death shall be made to the employee's personal representative for the benefit of the persons designated in, and according to the apportionment required by the Federal Employers Liability Act (45 U.S.C. 51 et seq., as amended), or if no such person survives the employee, for the benefit of his estate.

(d) Exclusions:

Benefits provided under paragraph (b) shall not be payable for or under any of the following conditions:

(1) Intentionally self-inflicted injuries, suicide or any attempt thereat, while sane or insane;

(2) Declared or undeclared war or any act thereof;

(3) Illness, disease, or any bacterial infection other than bacterial infection occurring in consequence of an accidental cut or wound;

(4) Accident occurring while the employee driver is under the influence of alcohol or drugs, or an employee passenger who is under the influence of alcohol or drugs who in any way contributes to the cause of the accident;

(5) While an employee is a driver or an occupant of any conveyance engaged in any race or speed test;

(6) While an employee is commuting to and/or from his residence or place of business.

(e) Offset:

It is intended that this Article XI is to provide a guaranteed recovery by an employee or his personal representative under the circumstances described, and that receipt of payment thereunder shall not bar the employee or his personal representative from pursuing any remedy under the Federal Employers Liability Act or any other law; provided, however, that any amount received by such employee or his personal representative under this Article may be applied as an offset by the railroad against any recovery so obtained.

C 856

A-4

(f) Subrogation:

The carrier shall be subrogated to any right of recovery an employee or his personal representative may have against any party for loss to the extent that the carrier has made payments pursuant to this Article.

The payments provided for above will be made, as above provided, for covered accidents on or after September 1, 1968.

It is understood that no benefits or payments will be due or payable to any employee or his personal representative unless such employee, or his personal representative, as the case may be, stipulates as follows:

"In consideration of the payment of any of the benefits provided in Article XI of the Agreement of July , 1968, _____ (employee or personal representative) agrees to be governed by all of the conditions and provisions said and set forth by Article XI."

Savings Clause

This Article XI supersedes as of September 1, 1968 any agreement providing benefits of a type specified in Paragraph (b) hereof under the conditions specified in Paragraph (a) hereof; provided, however, any individual railroad party hereto, or any individual committee representing employees party hereto, may by advising the other party in writing by August 15, 1968, elect to preserve in its entirety an existing agreement providing accident benefits of the type provided in this Article XI in lieu of this Article XI.

ARTICLE XII - GENERAL PROVISIONS

(1) APPROVAL

This Agreement is subject to approval of the courts with respect to carriers in the hands of receivers or trustees.

(2) EFFECT OF THIS AGREEMENT

(a) This agreement is in settlement of the dispute growing out of notices served on the carriers listed in Exhibits A, B and C on or about September 1, 1967 and of the notices dated on or about September 19, 1967, served by the individual railroads on organization representatives of the employees involved, and shall be construed as a separate agreement by and on behalf of each of said carriers and its employees represented by the organization signatory hereto, and shall remain in effect until January 1, 1970 and thereafter until changed or modified in accordance with the provisons of the Railway Labor Act, as amended.

(b) No party to this agreement shall serve, prior to September 1, 1969 (not to become effective before January 1, 1970), any notice for the purpose of changing the provisions of this agreement. Any pending notices served by the organization party hereto which are similar to the notices served on the carriers parties hereto on or about September 1, 1967 are hereby withdrawn and no such notices may be served by the organization prior to September 1, 1969 (not to become effective before January 1, 1970).

C 857 A-5

Case No. A - 10222

MEDIATION AGREEMENT

THIS AGREEMENT, made this 25th day of August 1978 by and between the participating carriers listed in Exhibit A, attached hereto and made a part hereof, and represented by the National Carriers' Conference Committee, and the employees of such carriers shown thereon and represented by the United Transportation Union, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - GENERAL WAGE INCREASES

Section 1 - First General Wage Increase (for others than Dining Car Stewards and Yardmasters)

(a) Effective April 1, 1978, all standard basic daily and mileage rates of pay of employees represented by the United Transportation Union in effect on March 31, 1978 shall be increased by an amount equal to 3 percent. The amount of cost-of-living allowance which remained in effect after a portion of the allowance was incorporated into the basic rates pursuant to Article II, Section 1(d) of the Agreement of January 29, 1975 will not be included with basic rates in computing the amount of this increase.

(b) In computing the increase for enginemen under paragraph (a) above, 3 percent shall be applied to the standard basic daily rates of pay, and 3 percent shall be applied to the standard mileage rates of pay, respectively, applicable in the following weight-on-drivers brackets, and the amounts so produced shall be added to each standard basic daily or mileage rate of pay:

Passenger	- 600,000 and less than 650,000 pounds
Freight	- 950,000 and less than 1,000,000 pounds (through freight rates)
Yard Engineers	- Less than 500,000 pounds
Yard Firemen	- 250,000 and less than 300,000 pounds (*) (separate computations covering five-day rates and other than five-day rates)

(c) The standard basic daily and mileage rates of pay produced by application of the increases provided for in this Section 1 are set forth in Appendix 1, which is a part of this Agreement.

(*) In implementation of the provisions of the Agreement entered into on this date, amending the Agreements of July 19, 1972 relating to Manning and Training, effective September 1, 1978, the rates of pay in the weight-on-drivers bracket 450,000 and less than 500,000 pounds, as increased under this Section 1, will be the minimum standard rates of pay for firemen in yard service.

Section 2 - Second General Wage Increase (for others than Dining Car Stewards and Yardmasters)

Effective October 1, 1978, all standard basic daily and mileage rates of pay of employees represented by the United Transportation Union in effect on September 30, 1978, shall be increased by an amount equal to 2 percent, computed and applied for enginemen in the manner prescribed in Section 1 above.

B-1

ARTICLE XII - BEREAVEMENT LEAVE

Bereavement leave, not in excess of three calendar days, following the date of death will be allowed in case of death of an employee's brother, sister, parent, child, spouse or spouse's parent. In such cases a minimum basic day's pay at the rate of the last service rendered will be allowed for the number of working days lost during bereavement leave. Employees involved will make provision for taking leave with their supervising officials in the usual manner.

- - - - -

This Article shall become effective fifteen (15) days after the date of this Agreement.

ARTICLE XIII - OFF-TRACK VEHICLE ACCIDENT BENEFITS

Article XI(b) of the July 17, 1968 Brotherhood of Railroad Trainmen Agreement, Article IX(b) of the July 29, 1968 Switchmen's Union of North America Agreement, Article IX(b) of the September 14, 1968 Brotherhood of Locomotive Firemen and Enginemen Agreement, Article V(b) of the March 19, 1969 United Transportation Union (C) Agreement and Article V(b) of the April 15, 1969 United Transportation Union (E) Agreement are hereby amended to read as follows:

(b) Payments to be Made:

In the event that any one of the losses enumerated in subparagraphs (1), (2) and (3) below results from an injury sustained directly from an accident covered in paragraph (a) and independently of all other causes and such loss occurs or commences within the time limits set forth in subparagraphs (1), (2) and (3) below, the carrier will provide, subject to the terms and conditions herein contained, and less any amounts payable under Group Policy Contract GA-23000 of The Travelers Insurance Company or any other medical or insurance policy or plan paid for in its entirety by the carrier, the following benefits:

(1) Accidental Death or Dismemberment

The carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	$150,000
Loss of Both Hands	$150,000
Loss of Both Feet	$150,000
Loss of Sight of Both Eyes	$150,000
Loss of One Hand and One Foot	$150,000
Loss of One Hand and Sight of One Eye	$150,000
Loss of One Foot and Sight of One Eye	$150,000
Loss of One Hand or One Foot or Sight of One Eye	$ 75,000

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

B-2

C 859

No more than $150,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident.

(2) Medical and Hospital Care

The carrier will provide payment for the actual expense of medical and hospital care commencing within 120 days after an accident covered under paragraph (a) of injuries incurred as a result of such accident, subject to limitation of $3,000 for any employee for any one accident, less any amounts payable under Group Policy Contract GA-23000 of The Travelers Insurance Company or under any other medical or insurance policy or plan paid for in its entirety by the carrier.

(3) Time Loss

The carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) hereof and who is unable to work as a result thereof commencing within 30 days after such accident 80% of the employee's basic full-time weekly compensation from the carrier for time actually lost, subject to a maximum payment of $150.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act.

(4) Aggregate Limit

The aggregate amount of payments to be made hereunder is limited to $1,000,000 for any one accident and the carrier shall not be liable for any amount in excess of $1,000,000 for any one accident irrespective of the number of injuries or deaths which occur in or as a result of such accident. If the aggregate amount of payments otherwise payable hereunder exceeds the aggregate limit herein provided, the carrier shall not be required to pay as respects each separate employee a greater proportion of such payments than the aggregate limit set forth herein bears to the aggregate amount of all such payments.

This Article will become effective 90 days after the date of this Agreement.

ARTICLE XIV - JOINT LABOR-MANAGEMENT COMMITTEE ON PHYSICAL DISQUALIFICATION PROCEDURES

Within sixty (60) days of the date of this agreement, a committee, consisting of two partisan members representing the carriers and two partisan members representing the United Transportation Union, will be established to continue study and formulation of procedures covering physical disqualifications.

C. 860 R-3

UNITED TRANSPORTATION UNION

NATIONAL AGREEMENT

AUGUST 25, 1978

QUESTIONS AND ANSWERS

FRED A. HARDIN
PRESIDENT

UNITED TRANSPORTATION UNION
FS-R&S DEPARTMENT
JANUARY 2, 1980

Certain rules of the UTU Agreement of August 25, 1978, and the BLE Agreement of July 26, 1978, are identical and in such cases the Questions and Answers contained herein are fully applicable to both Agreements.

Identical Rules

UTU		BLE
Article III	Vacations	Article III
Article IV	Health and Welfare	Article IV
Article V	Jury Duty	Article V
Article VI	Expenses Away From Home	Article VI
Article VII	Application For Employment	Article VII
Article XI	Combination Road-Yard Service Zones	Article VIII
Article XII	Bereavement Leave	Article XI
Article XIII	Off-Track Vehicle Accident Benefits	Article X

C-2

ARTICLE XIII (UTU)

Off-Track Vehicle Accident Benefit

ARTICLE XIII

(3) Time Loss

Q-1: As of the effective date of the revision of the off-track vehicle accident benefit provisions, a certain employee was receiving a loss of time benefit ($100 per week, less RUTA sickness benefits, for up to 156 consecutive weeks). Should his benefit rate be increased from $100 to $150 effective as of such date?

A-1: The intent of the agreement provisions was that the date of the accident should be controlling with respect to the benefit rate. If the accident occurred on or after 90 days after the date of the Agreement involved, the increased benefit rates apply.

C-3

AGREEMENT

of

AUGUST 20, 2002

Between Railroads Represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

Employees of such Railroads Represented by the

UNITED TRANSPORTATION UNION

D-1

Notwithstanding any provision to the contrary, the Panel may be dissolved at any time by majority vote of the members."

ARTICLE IX - OFF-TRACK VEHICLE ACCIDENT BENEFITS

Article XI(b) of the July 17, 1968 Brotherhood of Railroad Trainmen Agreement, Article IX(b) of the July 29, 1968 Switchmen's Union of North America Agreement, Article IX(b) of the September 14, 1968 Brotherhood of Locomotive Firemen and Enginemen Agreement, Article V(b) of the March 19, 1969 United Transportation Union (C) Agreement and Article V(b) of the April 15, 1969 United Transportation Union (E) Agreement, as amended by Article XIII of the August 25, 1978 United Transportation Union Agreement, are further amended as follows effective on the date of this Agreement.

Section 1

Paragraph(b)(1) - Accidental Death or Dismemberment of the above-referenced Agreement provisions is amended to read as follows:

"(1) Accidental Death or Dismemberment

The carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	$300,000
Loss of Both Hands	$300,000
Loss of Both Feet	$300,000
Loss of Sight of Both Eyes	$300,000
Loss of One Hand and One Foot	$300,000
Loss of One Hand and Sight of One Eye	$300,000
Loss of One Foot and Sight of One Eye	$300,000
Loss of One Hand or One Foot or Sight of One Eye	$150,000

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

No more than $300,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident."

Section 2

Paragraph (b)(3) - Time Loss of the above-referenced Agreement provisions is amended to read as follows:

"(3) Time Loss

The carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) commencing within 30 days after such accident 80% of the employee's basic full-time weekly compensation from the carrier for time actually lost, subject to a maximum payment of $1,000.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act."

Section 3

Paragraph(b)(4) - Aggregate Limit of the above-referenced Agreement provisions is amended by raising such limit to $10,000,000.

D-3

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2018 IL App (1st) 170075

FIRST DISTRICT,
SECOND DIVISION
June 26, 2018

No. 1-17-0075

MARY TERRY CARMICHAEL, Plaintiff, v. UNION PACIFIC RAILROAD COMPANY, PROFESSIONAL TRANSPORTATION, INC., d/b/a PTI, and ACE AMERICAN INSURANCE COMPANY, Defendants (Professional Transportation, Inc., Counter-Plaintiff-Appellant; Mary Terry Carmichael and Jesse White, Illinois Secretary of State; Counter-Defendants-Appellees).	)	Appeal from the Circuit Court of Cook County, Illinois, County Department Chancery Division No. 12 CH 38582 Honorable Sophia H. Hall, Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court, with opinion.
Justice Hyman concurred in the judgment and opinion.
Justice Pucinski specially concurred, with opinion.

OPINION

¶ 1 Plaintiff Mary Carmichael was injured in a car accident while she was a passenger in a van owned and operated by defendant Professional Transportation, Inc. (PTI). Carmichael brought suit against PTI, alleging that PTI failed to obtain the required limits of uninsured (UM) and underinsured (UIM) coverage under section 8-101(c) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/8-101(c) (West 2010)). PTI argued as an affirmative defense that no private right of action could be implied under section 8-101(c). PTI also filed the counterclaim at issue in this appeal, challenging the constitutionality of section 8-101(c).

¶ 2 The trial court found that a private right of action could be implied under section 8-101(c) and dismissed PTI's counterclaim, finding that the section survived constitutional scrutiny. Following Carmichael's voluntary dismissal of her claim against PTI, PTI appealed the dismissal of its counterclaim. We find that we do not need to reach the constitutional issues raised by PTI because section 8-101(c) does not give rise to a private right of action. Therefore, Carmichael's complaint against PTI should have been dismissed. Accordingly, PTI's counterclaim is moot.

¶ 3 BACKGROUND

¶ 4 Carmichael, a Union Pacific Railroad Company (Union Pacific) employee, was injured when the van in which she was a passenger collided with a vehicle driven by Dwayne Bell. The six-passenger van was owned and operated by PTI and was used to transport Union Pacific employees between railroad jobsites pursuant to a service contract between PTI and Union Pacific. Although Carmichael originally sought recovery for her injuries in a lawsuit against PTI, Bell, and others, she dismissed PTI after it became apparent that the accident was caused solely by Bell's negligence.

¶ 5 Bell carried the minimum liability coverage required under the Vehicle Code at the time: $20,000 per person and $40,000 per occurrence. *Id.* § 7-203. Carmichael settled with Bell for the $20,000 per-person policy limit. PTI was insured by defendant ACE American Insurance Company (ACE). The ACE policy provided for $5 million in liability limits, but provided the minimum UM/UIM coverage of $20,000 per person and $40,000 per occurrence. Consequently, no additional sums were available to Carmichael under the ACE policy.

¶ 6 In October 2012, Carmichael filed this action against PTI, ACE, and Union

Pacific. As it relates to PTI, Carmichael's complaint sought a declaration that PTI should be liable for her damages arising from the accident in excess of $20,000 up to $250,000 based on her allegation that PTI failed to obtain the required limits of UM/UIM coverage under section 8-101(c) of the Vehicle Code. *Id.* § 8-101(c).[1] That section, amended in 2006, requires "contract carrier[s] transporting employees in the course of their employment" in a vehicle "designed to carry 15 or fewer passengers" to obtain UM/UIM coverage of not less than $250,000 per person. *Id.* Carmichael alleged that PTI's six-person van, used to transport her in the course of her employment, fell into the foregoing category and that PTI's violation of this statutory provision gave rise to a private right of action, entitling her to recover from PTI the difference between her $20,000 settlement with Bell and the $250,000 UIM limit mandated by the statute.

¶ 7 PTI raised a number of defenses to Carmichael's complaint, including that no private right of action could be implied under section 8-101(c) and that the amendment to section 8-101(c) violated the special legislation, equal protection, due process, and commerce clauses of the state and federal constitutions. PTI also filed a counterclaim in which it challenged the constitutionality of the amendment on the same grounds and asserted that a related penal statute, section 8-116 of the Vehicle Code (*id.* § 8-116 (providing that failure to comply with, *inter alia*, the Vehicle Code's minimum insurance requirements constitutes a Class A misdemeanor)), was constitutionally infirm for the same reasons. PTI joined the State of Illinois as a counterclaim defendant.

¶ 8 The State moved to dismiss PTI's counterclaim, arguing both the insufficiency of

[1]Carmichael asserted other claims against Union Pacific and ACE. Union Pacific eventually settled with Carmichael, and the trial court granted ACE's motion to dismiss; neither is a party to this appeal.

PTI's allegations under section 2-615 and the merits of PTI's constitutional challenges under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2012)). The State pointed out that the proper procedure in the event of a challenge to a statute on constitutional grounds was to provide notice of the challenge and "afford the State, political subdivision, agency or officer, as the case may be, the opportunity, but not the obligation, to intervene in the cause or proceeding for the purpose of defending the law or regulation challenged." Ill. S. Ct. R. 19(c) (eff. Sept. 1, 2006). In addition to defending the amendment to section 8-101(c) against PTI's constitutional challenges, the State requested that the court defer addressing such issues until it resolved whether Carmichael was entitled to maintain a private right of action for violation of the statute's provisions.

¶ 9 PTI later filed a motion to dismiss Carmichael's complaint, in which it raised the issue of Carmichael's right to sue. Although the trial court initially directed the parties to brief PTI's motion, the court proceeded to first resolve the constitutional issues. On January 30, 2015, the court granted the State's motion to dismiss PTI's counterclaim, finding that the amendment survived constitutional scrutiny.[2] The court then addressed PTI's motion to dismiss Carmichael's complaint. On July 24, 2015, the court denied PTI's motion to dismiss, finding that Carmichael could pursue a claim for violation of section 801(c)'s mandated UM/UIM coverage.

¶ 10 After its motion to reconsider was denied and after Carmichael eventually voluntarily dismissed her remaining claims, PTI timely filed its notice of appeal.[3]

[2]The court ultimately determined that the proper party to respond was Jesse White, Illinois Secretary of State, and the caption of the case was amended accordingly.

[3]The trial court originally certified issues relating to the constitutionality of the

Carmichael originally filed a separate notice of appeal from the dismissal of her claim against ACE, but she dismissed that appeal on August 9, 2017. Carmichael refiled her complaint for declaratory judgment against PTI, and that case has been stayed pending the outcome of this appeal.

¶ 11 ANALYSIS

¶ 12 Chapter 8 of the Vehicle Code generally requires persons who operate motor vehicles and transport passengers for hire to file with the Secretary of State proof of financial responsibility, which may consist of an insurance policy, a surety bond, or a certificate of self-insurance. 625 ILCS 5/8-101(a) (West 2010) (rendering unlawful the operation of a motor vehicle for hire without proof of financial responsibility filed with the Secretary of State); *Id.* § 8-102 (proof of financial responsibility may consist of an insurance policy or other proof of insurance). Before 2006, the Vehicle Code provided that an insurance policy presented as proof of financial responsibility was required to have a bodily injury liability limit of at least $250,000 and a property damage limit of $50,000. *Id.* § 8-109. Section 8-109 was silent regarding the amount of required UM/UIM coverage, leaving covered carriers for hire free to purchase the minimum UM/UIM coverage of $20,000 per person and $40,000 per occurrence.

¶ 13 The 2006 amendment to section 8-101(c), which, as noted, applies only to contract carriers transporting employees in the course of their employment in a vehicle designed to carry 15 or fewer passengers,[4] requires such carriers to verify, as part of their proof of financial responsibility, UM/UIM coverage of "not less than $250,000 per

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amendment to section 8-101(c) pursuant to Illinois Supreme Court Rule 308 (eff. Jan. 1, 2016), but this court denied PTI's petition for leave to appeal.

[4]PTI suggests that this carve-out provision was the result of lobbying efforts by railroad labor unions in lieu of negotiating the issue through collective bargaining.

passenger." *Id.* § 8-101(c). It is undisputed that PTI did not comply with this provision and that the ACE policy contained only the minimum UM/UIM limits of coverage.

¶ 14 PTI contends that we need not reach the constitutional issues relating to the 2006 amendment to section 8-101(c) because, as a threshold matter, the trial court erred in finding that a private right of action exists to enforce that section's mandatory increased UM/UIM insurance requirements. See *People v. Waid*, 221 Ill. 2d 464, 473 (2006) (courts do not address constitutional issues that are unnecessary for the disposition of a case). The State agrees that if we accept PTI's argument and find that Carmichael has no right to sue for a violation of section 8-101(c), the constitutional issues are moot.

¶ 15 Because the statute on its face does not provide for a private right of action to enforce violations of its provisions, we must determine whether such a right can be implied. We review *de novo* the trial court's finding that Carmichael was entitled to maintain a cause of action against PTI for failure to comply with section 8-101(c)'s increased UM/UIM requirements. See *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶¶ 26, 39.

¶ 16 Judicial implication of a private right of action for violation of a statute that does not expressly provide a private remedy should be undertaken with caution. *Metzger v. DaRosa*, 209 Ill. 2d 30, 42-43 (2004); *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 460 (1999). The fact that a statute was enacted to protect a segment of the public does not, standing alone, indicate that the legislature meant to create a private right of action to redress a statutory violation. *Rhodes v. Mill Race Inn, Inc.*, 126 Ill. App. 3d 1024, 1027 (1984) (citing *Hoover v. May Department Stores Co.*, 77 Ill. 2d 93, 103-04 (1979)).

¶ 17 Our supreme court has determined that the following four factors must be established in order to judicially imply a private right of action:

> " '(1) [T]he plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute.' " *Metzger*, 209 Ill. 2d at 36 (quoting *Fisher*, 188 Ill. 2d at 460).

PTI does not raise any argument regarding the first three factors, but it argues that the fourth element of necessity is not met because the statute's own enforcement mechanisms provide an adequate remedy for violations. See *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 393 (1999) (unnecessary to consider first three elements where element of necessity is not met).

¶ 18 Regarding the element of necessity, courts will only imply a private right of action under a statute if " 'the statute would be ineffective, as a practical matter, unless such an action were implied.' " *Metzger*, 209 Ill. 2d at 39 (quoting *Fisher*, 188 Ill. 2d at 464). *Metzger* and *Fisher* are instructive on this issue. Metzger, a state police employee, pursued a claim based on the state police's violation of the whistleblower protection provision of the Personnel Code (20 ILCS 415/19c.1 (West 2002)). *Metzger*, 209 Ill. 2d at 32. She claimed she experienced adverse disciplinary action in retaliation for reporting coworkers' improper conduct. Our supreme court refused to imply a private right of action, finding that the statute's own enforcement mechanisms were sufficient to prevent and punish retaliation against whistleblowers. *Id.* at 41. The court noted that one who

violated the Personnel Code could be subject to demotion, suspension, or discharge; additionally, violation was a Class B misdemeanor punishable by a $1500 fine and imprisonment for up to six months. *Id.* Accordingly, *Metzger* concluded: "We cannot say that the statutory framework of the Personnel Code is so deficient that it is necessary to imply a private right of action for employees to effectuate its purpose." *Id.* at 42.

¶ 19 Similarly, in *Fisher*, plaintiffs sought to pursue an action for damages under section 3-608 of the Nursing Home Care Act (210 ILCS 45/3-608 (West 1996)), which prohibits a nursing home from retaliating against employees who report improper patient treatment. *Fisher*, 188 Ill. 2d at 456. Plaintiffs were nurses who were allegedly harassed and, in one case, fired for reporting patient neglect. *Fisher* held that it was not necessary to imply a private right of action because "the Act contains numerous mechanisms to encourage the reporting of violations of the Act and to prevent and punish retaliation against those who make such reports." *Id.* at 464. Notably, the statute expressly authorized nursing home residents to bring suit for violations. *Id.* at 464-65. Additionally, a facility that violated the statute's provisions could be subject to fines and suspension or revocation of its license. *Id.* at 465-66. Because the statute "provided a statutory framework to encourage reporting of violations and to punish retaliation," *Fisher* held that a private right of action for employees was unnecessary to effectuate the statute's purpose. *Id.* at 467.

¶ 20 The rationale of *Metzger* and *Fisher* has been adopted in numerous other Illinois cases that decline to imply a private cause of action from statutes that have robust built-in enforcement mechanisms. See *Kagan*, 2016 IL App (1st) 131274, ¶¶ 44, 46 (no implied private right of action under Cemetery Care Act (760 ILCS 100/1 *et seq.* (West 2012)),

which "is replete with sanctions and remedies for violations of its provisions," including felony criminal penalties, fines, and license revocation); *Davis v. Kewanee Hospital*, 2014 IL App (2d) 130304, ¶ 38 (no implied private right of action under confidentiality provision of Medical Studies Act (735 ILCS 5/8-2101 (West 2008)), where the Act provides that improper disclosure of privileged information is a Class A misdemeanor); *Rekosh v. Parks*, 316 Ill. App. 3d 58, 73-74 (2000) (no implied private right of action under the Funeral Directors and Embalmers Licensing Code (225 ILCS 41/1-1 *et seq.* (West 1998)), which provides penalties for noncompliance including fines and suspension or revocation of licenses), *abrogated on other grounds by Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200 (regarding scope of recoverable damages in action for interference with right to possess corpse). But see *Pilotto v. Urban Outfitters West, L.L.C.*, 2017 IL App (1st) 160844, ¶ 40 (private right of action was necessary to effectuate the purpose of the Restroom Access Act (410 ILCS 39/1 *et seq.* (West 2014)), since the only statutory penalty for violation was a fine not to exceed $100; the court found this penalty inadequate to make compliance likely, stating that "a retail store that refuses to comply with the Act would not even notice the impact of the petty offense penalty").

¶ 21 As with the foregoing cases, the Vehicle Code contains its own framework for enforcement. A vehicle operator who violates section 8-101(c) is subject to both criminal and regulatory penalties. Failure to comply with any of the provisions of Chapter 8 is a Class A misdemeanor, which allows for a fine up to $2500 and imprisonment for less than one year. 625 ILCS 5/8-116 (West 2010); 730 ILCS 5/5-4.5-55(a)-(e) (West 2010). Additionally, if an insurance policy or bond is withdrawn for a vehicle subject to section

8-101, the Secretary of State "immediately shall suspend" the owner's registration certificates, plates, and stickers for that vehicle. 625 ILCS 5/8-113 (West 2010). We cannot say that these statutory penalties are so deficient that it is necessary to imply a private right of action to effectuate the statute's purpose.

¶ 22 Carmichael nevertheless argues that the statutory penalties are inadequate because they do not compensate her for the damages she suffered—*e.g.*, by offsetting her medical expenses and lost wages. Our supreme court in *Metzger* rejected an identical argument. According to *Metzger*, plaintiff's focus on compensation was "inappropriate[ ]" and the proper consideration was whether the statutory penalties were sufficient to make compliance with the statute likely. *Metzger*, 209 Ill. 2d at 41.

¶ 23 Carmichael also argues that the statutory penalties are demonstrably inadequate because they did not deter PTI from carrying less than the mandated amount of coverage. But compliance only needs to be "likely" (*id.*), not certain. Every implied-right-of-action suit involves a defendant's alleged failure to comply with the statute at issue. If that were by itself sufficient to make a private right of action necessary, the element of necessity would be meaningless. Such is not the case in Illinois, where, as discussed, courts in numerous cases have found that statutory penalties obviate the need for an implied private right of action even where those penalties apparently did not impel the defendant to comply with the statute. See *id.* at 42; *Fisher*, 188 Ill. 2d at 467; *Kagan*, 2016 IL App (1st) 131274, ¶¶ 44, 46; *Davis*, 2014 IL App (2d) 130304, ¶ 38; *Rekosh*, 316 Ill. App. 3d at 73-74.

¶ 24 Accordingly, we conclude that section 8-101(c) of the Vehicle Code does not imply a private right of action for passengers in vehicles subject to the provisions of that

section and PTI's counterclaim challenging the constitutionality of the amendment to section 8-101(c) is therefore moot. We affirm the trial court's January 30, 2015, dismissal of PTI's counterclaim, although on grounds different than that relied on by the trial court.

¶ 25 Affirmed.

¶ 26 JUSTICE PUCINSKI, specially concurring.

¶ 27 I write to specially concur with my colleagues because while I believe that their analysis of the current state of the law in Illinois is correct, I think the law is wrong. The whole reason for UM and UIM coverage was to take care of expenses of the victims of vehicle crashes. Punishing a license holder under the Traffic Code does nothing to restore the victim and leaves, in my opinion, a gaping hole in the system of justice. I would urge the legislature to look into this matter.

No. 123853

In The
Supreme Court of Illinois

MARY TERRY CARMICHAEL,
Plaintiff-Appellant,

v.

PROFESSIONAL TRANSPORTATION, INC., a foreign Corporation, d/b/a PTI
Defendant-Appellee,

and

ACE AMERICAN INSURANCE CO., a foreign corporation, and
UNION PACIFIC RAILROAD COMPANY, a foreign corporation,
Defendants.

PROFESSIONAL TRANSPORTATION, INC., a foreign corp., d/b/a PTI
Counter-Plaintiff-Appellee,

v.

MARY TERRY CARMICHAEL,
Counter-Defendant-Appellant,

and

JESSE WHITE, ILLINOIS SECRETARY OF STATE
Counter-Defendant.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-17-0075. There Heard on Appeal from the
Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 12 CH 38582
The Honorable Judge **Sophia H. Hall** Presiding.

NOTICE OF FILING and CERTIFICATE OF SERVICE

To: All attorneys of record (see attached Service List)

PLEASE TAKE NOTICE that on February 13, 2019, we electronically filed with the Clerk of the Supreme Court of Illinois, through eFileIL, the ***Additional Brief of the Defendant/Counter-Plaintiff-Appellee, Professional Transportation, Inc. Cross-Relief***

Requested, ***Separate Appendix***, and ***Notice of Filing and Certificate of Service***, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

HALL PRANGLE & SCHOONVELD, LLC

/s/ Hugh C. Griffin
One of the Attorneys for Defendant/Counter-Plaintiff-Appellee Professional Transportation, Inc. d/b/a PTI

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Carolyn Taft Grosboll
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CERTIFICATE OF SERVICE

I, the undersigned, a non-attorney, certify that on this 13th day of February, 2019, true and correct copies of the attached ***Additional Brief of the Defendant/Counter-Plaintiff-Appellee, Professional Transportation, Inc. Cross-Relief Requested***, ***Separate Appendix***, and ***Notice of Filing and Certificate of Service*** were served via eFileIL and email to the attorneys of record on the attached Service List.

/s/ Rita A. Ayers
Rita A. Ayers

/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.

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