No. 121943

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

ANGELA ANTONICELLI,	)	
	)	On Appeal from the Illinois
Plaintiff-Respondent,	)	Appellate Court, First
v.	)	Judicial District
	)	
DANIEL JUAN RODRIGUEZ,	)	No. 1-15-3532
	)	
Defendant-Respondent,	)	There heard on Appeal from
	)	the Circuit Court of Cook
ARTEMIO RAMOS	)	County Illinois, Law Division
	)	
Defendant,	)	Honorable Moira S. Johnson,
	)	*Judge Presiding.*
KARL BROWDER, CHICAGO TUBE	)	
AND IRON COMPANY, a Foreign	)	
Corporation, and TRILLIUM STAFFING	)	
d/b/a TRILLIUM DRIVERS SOLUTIONS,)		
a Foreign Corporation,	)	
	)	
Defendants-Petitioners,	)	

(CAPTION CONTINUED ON INSIDE COVER)

BRIEF OF THE APPELLANTS

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ORAL ARGUMENT REQUESTED

KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation, and TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTIONS, a Foreign Corporation,	)
Counter-Plaintiffs-Petitioners,	)
v.	)
DANIEL JUAN RODRIGUEZ,	)
Counter-Defendant-Respondent.	)

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POINTS AND AUTHORITIES

NATURE OF CASE

This is a personal injury action for damages arising out of a motor vehicle accident. On November 19, 2015, the trial court granted a Motion filed by the Defendant, Daniel Juan Rodriguez, entering a Good Faith Finding relative to his settlement with the Plaintiff under the Illinois Contribution Act. The court's order included the dismissal of the counterclaims for contribution filed by the Defendants-Appellants, Chicago Tube and Iron, Trillium Staffing, and Karl Browder. A timely appeal was taken from the trial court's order of November 19, 2015, under Supreme Court Rule 304(a). On January 17, 2017, the Appellate Court, First District issued an order affirming the decision of the trial court. The Appellants' Petition for Leave to Appeal was granted on May 24, 2017. The Appellants made a timely election to file an additional brief with the Supreme Court on June 6, 2017.

STATEMENT OF JURISDICTION

This is an appeal pursuant to Supreme Court Rule 304(a) from a judgment order entered on November 19, 2015, dismissing the Plaintiff's action against the Defendant, Daniel Juan Rodriguez, and dismissing the counterclaims of the Defendants-Appellants, Chicago Tube and Iron, Trillium Staffing, and Karl Browder, against Daniel Juan Rodriguez. A Notice of Appeal was filed on December 14, 2015, within the statutory 30 day time limit. The Illinois Appellate Court, First District affirmed the decision of the trial court on January 17, 2017. This Court granted the Appellants' Petition for Leave to Appeal on May 24, 2017.

STANDARD OF REVIEW

The standard of review for the first issue should be *de novo* review which applies to questions of law raised in motions to dismiss and the construction of a statute. *Rehnquist v. Stackler*, 55 Ill.App.3d 545, 550 (1st Dist. 1977). *De novo* Review should be applied to issues involving either a pure question of law or mixed question of law and fact in which just the application or interpretation of the law is in dispute. *Rehnquist,* at 550.

The second issue should be subject to an abuse of discretion standard. Under this standard, a reviewing court will reverse the judgment of the lower court only when no reasonable person could take the view adopted by the lower court. *In Re Marriage of Getautas*, 189 Ill.App.3d 148, 155 (2d Dist. 1989). A trial court abuses its discretion when it applies the wrong legal standard. See *People v. Ortega*, 209 Ill. 2d 354, 359 (2004).

STATUTES REFERENCED

- Statute on the Right of Contribution
- Statute on Joint Liability

STATUTE ON THE RIGHT OF CONTRIBUTION

740 ILCS 100/2 Right of Contribution

(a) Except as otherwise provided in this Act, where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is liable to make contribution beyond his own pro rata share of the common liability.

(c) When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.

(d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor.

(e) A tortfeasor who settles with a claimant pursuant to paragraph (c) is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the settlement.

(f) Anyone who, by payment, has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full his obligation to the tortfeasor, is subrogated to the tortfeasor's right of contribution. This provision does not affect any right of contribution nor any right of subrogation arising from any other relationship.

STATUTE ON JOINT LIABILITY

735 ILCS 5/2-1117

Sec. 2-1117. Joint liability. Except as provided in Section 2-1118, in actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant except the plaintiff's employer, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants except the plaintiff's employer, shall be jointly and severally liable for all other damages.

STATEMENT OF FACTS

This case arises out of a motor vehicle accident occurring on November 2, 2013 on Highway I-88 at or near milepost 120.5, the Township of Naperville, County of DuPage, State of Illinois. (R. Vol. I, C87). The accident occurred at 1:31 a.m. (S.R. Vol. I, C10, 62). Weather was not a factor. (S.R. Vol. I, C43, 52). Three of the eastbound lanes of I-88 were closed due to construction. (S.R. Vol. I, C43, 49). The only eastbound lane open was lane one, closest to the median (S.R. Vol. I, C43, 49). Angela Antonicelli was a passenger in a Toyota Scion driven by Charles Herman traveling eastbound. (R. Vol. 1, C87; S.R. Vol. I, C43, 49). Karl Browder was operating a semi tractor and trailer on behalf of Trillium Staffing and Chicago Tube and Iron traveling eastbound behind the vehicle driven by Charles Herman. (R. Vol. I, C87-C98; S.R. Vol. I C43, 48, 49). Daniel Juan Rodriguez was driving westbound in a Chrysler Pacific on I-88. (S.R. Vol. I, C43, 48, 49, C87). At the time of the occurrence, Daniel Juan Rodriguez was under the influence of cocaine. (S.R. Vol. **1,** C142-145).

While traveling westbound, Daniel Juan Rodriguez made a U-turn through the median on I-88, resulting in a collision with the vehicle driven by Charles Herman. (R. Vol. I, C87, '88; S.R. Vol. I, C43, 49, 57). After the impact with the Pacifica, the vehicle driven by Charles Herman rotated clockwise in lane one of the eastbound lanes and was struck on the passenger door by the semi driven by Karl Browder. (S.R. Vol I, C49).

Following the occurrence, the Plaintiff, Angela Antonicelli, was extricated from the Toyota Scion by emergency fire personnel. (S.R. Vol. I, (51, 65). She was then rushed to Rush Copley Hospital in Aurora and later transferred to Loyola Hospital in Maywood.

(S.R. Vol. I, C65). As a result of the accident, the Plaintiff, Angela Antonicelli, suffered severe permanent injuries that required multiple surgeries. (R. Vol. I, C63-C71).

A post occurrence inspection of the vehicles involved in the accident by the Illinois State Police showed that the Toyota Scion driven by Charles Herman sustained extensive front end damage as a result of its impact with the vehicle driven by Daniel Juan Rodriguez. (S.R. Vol. I, C48, 52, 93). The Scion sustained minor damage to the passenger door as a result of the second impact with the semi driven by Karl Browder. (S.R. Vol. I, C51, 104). An inspection of the semi revealed only minor damage to the front bumper and a cracked headlamp. (S.R. Vol. I, C48, 51, 106, 107). Damage to the vehicles involved in the accident is depicted in photographs taken by the Illinois State Police. (S.R. Vol. 1). The Illinois State Police concluded that improper lane usage and other traffic violations by Daniel Juan Rodriguez were the primary cause of the crash. (S.R. Vol. 1, C75-132).

As a result of the occurrence, Daniel Juan Rodriguez pled guilty to aggravated DUI. (S.R. Vol. I, C142-145). He is currently serving a sentence of seven years imprisonment in the Vienna Correctional Center. (S.R. Vol. I, Cl84). He admitted at his deposition that by driving under the influence he placed himself and others in danger. (S.R. Vol. 1, C192, 205).

The Plaintiff's lawsuit seeks the recovery of damages for her extensive personal injuries. (R. Vol. I, C63-C71). Her First Amended Complaint was brought against Daniel Juan Rodriguez, Chicago Tube and Iron, Trillium Staffing, and Karl Browder. (R. Vol. 1, C87-C98).[1] An action for contribution was filed by Chicago Tube and Iron, Trillium

[1] She also sued Artemio Ramos, the alleged owner of the vehicle driven by Rodriguez. An appearance has not been filed by this defendant.

Staffing, and Karl Browder against the Co-Defendant, Daniel Juan Rodriguez. (R. Vol II, C262-278). At the conclusion of fact discovery, the Plaintiff entered into a settlement with Daniel Juan Rodriguez for the sum of $20,000.00, the policy limit of Mr. Rodriguez's insurance coverage. (S.R. Vol. I, C6-8). Daniel Juan Rodriguez thereafter filed an Amended Petition for a Finding of Good Faith and Dismissal relative to his settlement with the Plaintiff. (S.R. Vol. I, C6-8). On November 19, 2015, after the Motion was fully briefed, the trial court heard oral argument and entered a Good Faith Finding relative to the settlement. (R. Vol. II, C328, 329; S.R. Vol. II, C2-22) The court's order also dismissed the Plaintiffs Amended Complaint against Daniel Juan Rodriguez and the counterclaim brought by Chicago Tube and Iron, Trillium Staffing, and Karl Browder against Daniel Juan Rodriguez, with an express finding under Supreme Court Rule 304(a) that there is no just cause to delay enforcement or appeal. (R. Vol. 1, pp, C328, C329). (Appendix, 3)

The Appellate Court declined to address the issue of whether an intentional tortfeasor can enter into a good faith settlement, and thereby shield himself from a claim for contribution. Instead, the Court held that the trial court did not abuse its discretion by basing its decision solely on the allegations of the complaint, without regard to the undisputed, extrinsic evidence of Rodriguez's intentional misconduct (Opinion, A-8). The Appellate Court also concluded as a matter of law that the trial court did not abuse its discretion by failing to give proper consideration to the rights of the Browder defendants under § 2-1117 of the Code of Civil Procedure (Opinion, A-8).

ARGUMENT

A. The Appellate Court's Refusal to Address the Issue of Whether an Intentional Tortfeasor can enter into a Good Faith Settlement under the Contribution Act Conflicts with the Illinois Supreme Court's Statutory Construction of the Act.

The Appellate Court acknowledged that under *Gerill Corp. v. Hargrove Builders Inc.*, 128 Ill. 2d 179 (1989), this Court held that intentional tortfeasors are not entitled to contribution under the Act (Opinion, A-13). Nevertheless, the Appellate Court allowed an intentional tortfeasor to reap the benefits of the Contribution Act by dismissing appellants' contribution claim against him. In *Gerill*, the Circuit Court dismissed a third-party complaint for contribution brought by a third-party Plaintiff charged with fraudulent misrepresentation. The *Gerill* Court discussed the statutory interpretation of the Contribution Act in determining that the *Skinner* decision, which abolished the No Contribution Rule and its subsequent codification by the General Assembly in the Illinois Contribution Act, showed that the Act was not intended to create a right of contribution for intentional tortfeasors. *Gerill*, 128 Ill. 2d. 179, 204). Therefore, the Court held that intentional tortfeasors are not entitled to contribution under the Illinois Contribution Act. *Gerill* at 206.

In *Skinner v. Reed-Prentis Div. Package Machinery Company*, 70 Ill. 2d. 1 (1977), this Court examined the history of the "No Contribution Rule," reaching the conclusion that it was predicated on a misunderstanding of the English common law decision in *Merryweather v. Nixan* (1799, 101 ENG. REP. 1337, 8 Term R. 186). The court noted that at the time of the *Merryweather* decision, the law had not developed a distinction between intentional torts and negligent torts. Later, when causes of action for

negligence became common, it became apparent that parties charged with negligence faced an impediment to shifting responsibility to another potentially responsible negligent party. As a result, the concept of implied indemnity became prevalent and, in some instances, parties employed collusive strategies to shift liability from another party by way of loan receipt agreements. *Skinner* at 12, 13.

Accordingly, the *Skinner* court concluded that there was an obvious lack of sense and justice in a rule that permits the entire burden of a loss (for which two defendants were equally, unintentionally responsible) to be shouldered by one alone. Therefore, the Court held that the governing equitable principles require that liability for a Plaintiff's injuries be apportioned on the basis of relative degree of fault of the Defendants. *Skinner* at 14.

Based on the history of the Contribution Act, which firmly establishes the right of contribution as an equitable remedy, an intentional tortfeasor cannot have an equitable basis for seeking the protection of the Act. This was confirmed in *Skinner* and *Gerill*, in which this Court excluded intentional tortfeasors for purposes of determining the right of contribution. *Skinner* at 13, *Gerill* at 206. In this case, Rodriguez seeks protection under paragraphs (c) and (d), which provide as follows:

> (c) When a release or covenant not to sue, or not to enforce judgment, is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery of any claim against the others to the extent of the amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.
>
> (d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from liability for any contribution to any other tortfeasor.

Accordingly, Rodriguez claims the release he was given by the Plaintiff satisfied the Good Faith requirement of a settlement under the Contribution Act, and by settling in good faith, he is discharged from liability for any contribution sought by the Browder defendants.

In this case, Rodriguez' settlement with the Plaintiff was not in good faith, and did not discharge his liability to the Browder defendants because he was an intentional tortfeasor, excluded from the Act's application. Therefore, he cannot avail himself of the protection of section (d) of the Act, resulting in the dismissal of the Browder Defendants' counterclaim. As an intentional tortfeasor, he has no equitable basis for seeking any remedy of any kind under the Act. However, the Appellate Court declined to address the issue raised in the Browder Defendants' appeal because the Court limited its focus to the allegations of the Plaintiff's complaint against Rodriguez, which characterized him as a negligent tortfeasor.

The Appellate Court's analysis was incorrect in several respects, disregarding the purpose of the Contribution Act. Whether a settlement satisfies the good faith requirement as contemplated by the Contribution Act is left to the discretion of the trial court, based upon the Court's consideration of the totality of circumstances underlying the settlement. *Johnson v. United Airlines*, 203 Ill. 2d 121, 133, 783 N.E.2d 812, 217 Ill. Dec. 258 (2003). Contrary to the Appellate Court's analysis, the totality of circumstances surrounding the settlement necessarily includes evidentiary considerations outside the pleadings. *Muro v. Able Freight Lines*, 283 Ill. App. 3d 416, (case remanded for evidentiary hearing regarding the reasonableness and good faith of settlement at issue); *Cianci v. Safeco Ins. Co.*, 356 Ill. App. 3d 767 (1st Dist. 2005), (evidentiary hearing may

be necessary to determine whether settlement has been reached in good faith). The Appellate Court erroneously supported its analysis by concluding that the allegations of a non-settling defendant's contribution claim are irrelevant (Opinion, A-16). In this regard, the Appellate Court reasoned that a counterclaim is an independent cause of action and therefore it need not be taken into consideration in a good faith analysis under the Contribution Act (Opinion, A-16). The Appellate Court failed to cite any case authority that directly supports this proposition. This points to a fundamental flaw in the Appellate Court's reasoning. While the plaintiff may be the "master of his pleadings", the remedy of contribution is available only to defendants. *Gerill Corp. v. Hargrove Builders Inc.*, 128 Ill. 2d 179, 205 (1989).

In this case, the plaintiff's allegations that Rodriguez acted negligently were controverted by undisputed, extrinsic evidence that Rodriguez's acts were intentional. (S. R. Vol. I C140, 180, 184). Therefore, based upon the totality of circumstances, the true nature of Rodriguez's conduct should have been taken into consideration. Because the remedy of contribution is available only to a negligent tortfeasor who otherwise must bear the entire burden of liability against the Plaintiff, the court should not effectively "veto" a defendant's right of contribution by focusing exclusively on the allegations of the plaintiff's complaint.

As a result, the Appellate Court sidestepped an issue of statutory construction requiring *de novo* review. Rodriguez relied upon *Pecoraro v. Balkonis*, 383 Ill. App. 3d 1028 (2008), to argue that a defendant sued in intentional tort may settle in good faith and receive the protection of the Act. In *Pecoraro*, the plaintiff, a hockey coach, was injured when one of his players threw a hockey stick at him and punched him. *Id* at 1029. The

coach then sued the player, alleging assault and battery, while naming the hockey association as a co-defendant based on allegations of negligence. *Id*. The association then filed a contribution claim against the player, who pled guilty to a criminal battery charge and subsequently settled with the coach for $5,000 and an assignment of rights under two insurance policies that denied coverage. *Id*. The hockey association opposed this Motion for Good Faith Finding, on the grounds that its exposure far exceeded the amount of the settlement. The Appellate Court affirmed the trial court's finding that the settlement was in good faith, concluding that it was not an abuse of discretion. Rodriguez has argued that even if he acted intentionally, the trial court in this case did not err in making a good faith finding. *Pecoraro*, however, can be distinguished on the grounds that the *Pecoraro* Court had no reason to address the issue raised in this case as the non-settling defendants never raised the issue of whether an intentional tortfeasor can reach a good faith settlement under the act.

Rodriguez also argued in the Appellate Court that if the Contribution Act only applies to negligent tortfeasors, the Browder Defendants cannot assert a contribution claim against an intentional tortfeasor. This ignores the fundamental basis for contribution, which provides a negligent tortfeasor with an equitable right to an apportionment of damages. The cases that have addressed the issue have held that there is no dispute that an allegedly negligent tortfeasor can seek contribution from an allegedly intentional tortfeasor. *ADGOOROO, LLC v. Hechtman*, 216 Ill. App. (First) 142531-U: *Long Beach Mortgage Co. v. White*, 918 F.Supp. 252, 254 (N.D. Ill. 1996). In *Long Beach*, the Court commented that "it would be totally bizarre to preclude a tortfeasor who is even less at fault (negligent, rather than that willful and wanton) from

obtaining contribution from a tortfeasor who is even more at fault (an intentional rather than merely negligent wrongdoer)"). *Long Beach*, 918 F.Supp. 252, 254.

In this case, the issue of whether an intentional tortfeasor can be protected by the Contribution Act by means of a good faith finding and dismissal of a non-settling defendant's counterclaim should have been addressed. Had the Court done so, it would have been compelled to decide that Rodriguez' settlement was inconsistent with the purpose of the Contribution Act.

Therefore in this case, the trial court and Appellate court incorrectly held that Rodriguez, as an intentional tortfeasor, could seek the protection of the Contribution Act.

B. The Appellate Court also erroneously failed to consider the rights of minimally culpable defendants under Section 2-1117, when it entered a Good Faith Finding in Favor of Rodriguez's settlement with the Plaintiff.

This Court in *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 65 (2003) held that under Section 2-1117 of the Code of Civil Procedure, the legislature provided statutory protection for minimally culpable tortfeasors. The *Unzicker* court also held that the Contribution Act and § 2-1117 can be applied consistently to effectuate the legislative intent of both statutes. From a procedural standpoint, this Court held that § 2-1117 comes into play before the Contribution Act to determine liability of the minimally culpable defendant. *Unzicker*, 203 Ill. 2d 65, 80.

The Appellate Court failed to follow this Court's decision in *Unzicker* when it determined that an analysis of the relative degree of fault of the parties under Section 2-1117 is not a factor that the trial court needs to take into consideration in making a good faith finding.

Once again, the decision of the Appellate Court is at odds with the purpose of the Contribution Act to promote two important public policies: encouraging settlements and ensuring the equitable apportionment of damages among tortfeasors. *Johnson v. United Airlines*, 203 Ill. 2d 121, 133 (2003). The rationale given by the Appellate Court, if accepted, would rule out any consideration of the equitable apportionment of damages among tortfeasors in arriving at a good faith finding.

In *Johnson v. United Airlines*, this Court recognized that not all legally valid settlements satisfy the good faith requirements of the Contribution Act. *Johnson* at 132. Whether or not a settlement satisfies the good faith requirements contemplated by the Contribution Act is a matter left to the discretion of the trial court based upon the court's consideration of the totality of circumstances. *Johnson*, at 135. A settlement will not satisfy the good faith requirements of the Act if it conflicts with the terms of the Act, or is inconsistent with the policies underlying the Act. *Johnson* at 133. One such policy is the fundamental policy of apportioning damages among joint tortfeasors on an equitable basis. *Johnson* at 133. The amount of the settlement must also be viewed in relation to the probability of recovery, the defenses raised, and the settling party's potential legal liability. *Johnson*, at 137 Furthermore, the court held that evidence of Plaintiff's motivation to impede a legitimate claim for contribution is a factor that the court must take into consideration. *Johnson* at 138. Under the facts presented in *Johnson*, the court concluded that the nominal amount of the settlement viewed in light of the circumstances surrounding the case was not in and of itself an indication that the settlement was made in bad faith. *Johnson* at 138.

The undisputed facts of this case show that Rodriguez was under the influence of cocaine at the time he attempted to make a U-turn through a concrete median, resulting in a T-bone collision with the vehicle occupied by the Plaintiff. (S.R. Vol. 1, C.142-145) The State Police, who investigated the accident, performed an accident reconstruction analysis, noting extensive damage resulting from the first impact with Rodriguez to the front end of the vehicle occupied by the Plaintiff. (S.R. Vol. 1, C. 48, 52, 93) The second impact involving the Browder tractor trailer resulted in only minor damage to the passenger door of the Plaintiff's vehicle, and a cracked headlamp and scraped bumper on the semi. (SR. Vol. 51, 106, 107).

Based upon these facts, a reasonable jury could easily reach the conclusion that Rodriguez was the sole proximate cause of the Plaintiff's injuries. In the alternative, it would be equally plausible for a jury to conclude that the most culpable party, Rodriguez, bears 99% responsibility for the accident.

In *Ready v. United/Goedecki Services*, 232 Ill. 2d 369, 385, (2008), this Court interpreted Section 2-1117 to apply only to defendants who remain in a case at trial. *Ready* at 385. As a result, defendants who have "settled out" are not included in the apportionment analysis for purposes of determining whether any other remaining defendants are less than 25% at fault (*Ready*, 232 Ill. 2nd 369, 383). The only remedy available to a non-settling defendant found liable at trial is a setoff for the amount of any pre-trial settlement (740 ILCS 100/2; *Dubina v. Meisirow Realty Development, Inc.*, 197 Ill. 2nd 185, 195, (2001)). Based upon statutory construction of Section 2-1117 given by the *Ready* court, the Browder Defendants will be subject to liability for 100% of the Plaintiff's damages at trial, minus a $20,000 Rodriguez pre-trial settlement.

In contrast to *Ready*, the *Unzicker* court held that the clear legislative intent behind Section 2-1117 was that minimally responsible defendants should not have to pay entire damage awards, setting the line of minimal responsibility at less than 25% (*Unzicker*, 203 Ill. 2d at 78). The jury in *Unzicker* allocated 99% responsibility to Plaintiff's employer, named as a third party defendant. Justice Thomas, writing the majority opinion, noted that by ignoring a party found to be 99% responsible for Plaintiff's injuries, while requiring a party found 1% responsible to pay all of the non-medical damages, would not be in accord with the clear legislative intent in the enactment of Section 2-1117. (*Unzicker* at 79).

The statutory construction given by the Supreme Court in *Ready* is at odds with the construction given in *Unzicker*. The *Ready* court based its decision on the legislative history of Section 2-1117, concluding that parties who settle are not included in a 2-1117 apportionment of damages at trial. Justice Garman and Justice Karmeier dissented, arguing that the plain language of Section 2-1117 required its application to all defendants sued by the plaintiff and third-party defendants, regardless of whether any of them remained in the case at trial. *Ready* at 395. The dissent also questioned the legislative history in light of various Appellate Court decisions which at best provided inconclusive evidence of the legislature's intent. *Ready* at 395-405. The dissent listed various reasons why the plurality interpretation of the Act was "inimical to the goal of protecting minimally responsible tortfeasors from excessive liability." *Ready* at 405, 406.[2]

[2] Further, it should be noted that Justice Thomas, who authored the *Unzicker* opinion, did not participate in the decision.

The arguments raised in the *Ready* dissenting opinion apply equally to the application of Section 2-1117 and this case. Nevertheless, even if this court continues to adhere to the analysis in the plurality opinion of *Ready*, the application of Section 2-1117 must be reconciled with the Illinois Contribution Act.

The *Unzicker* court held that the Contribution Act and Section 2-1117 do not conflict. *Unzicker*, 203 Ill. 2nd at 80. As previously stated, Section 2-1117 comes into play before the Contribution Act is applied to determine liability. *Unzicker*, 203 Ill. 2d at 80. Therefore, a Motion for Good Faith Finding, under the Contribution Act, must necessarily take into consideration the non-settling Defendants' rights under Section 2-1117.

The Illinois Appellate Court in this case failed to follow the Supreme Court's decision in *Unzicker* when it determined that an analysis of the relative degree of fault of the other parties under Section 2-1117 is not a factor that the trial court needs to take into consideration in making a good faith finding. The court rejected the Appellants' argument that the *Unzicker* decision requires a 2-1117 analysis to be performed prior to reaching a determination that a settlement has been reached in good faith. The Court made no attempt to explore a reasonable basis for reconciling the two statutes. A common sense approach suggests that the two statutes can be applied consistently. This can be done in a fairly straightforward manner by conducting a preliminary 2-1117 analysis as part of an evidentiary hearing on a Motion for Good Faith Finding.

A non-settling Defendant, when faced with a Motion for Good Faith Finding, should have the opportunity to present evidence to support an argument that there is a likelihood at trial that a jury will find the non-settling defendant to be less than 25% at

fault. Assuming that the non-settling Defendant meets his burden of proof on this issue by a preponderance of evidence, the Court can deny the Motion for Good Faith Finding without prejudice. The Plaintiff, if he so chooses, can accept the settlement offer and release the settling defendant, or enter into a covenant not to execute a judgment. By so doing, the Plaintiff can receive the settlement proceeds before trial. Assuming the jury finds in favor of the Plaintiff, the issue of whether the settlement was in good faith can be renewed in a post-trial motion at the same time that the non-settling defendant can seek a reduction in damages under 2-1117 if he is found to be less than 25% at fault. In this way, the interests of each of the parties are protected.

Furthermore, given the practical reality that most cases settle prior to trial, in a multi-party case it is likely that the Motion for Good Faith Finding can be renewed prior to trial if other Defendants settle out. Assuming that more than one Defendant settles with the Plaintiff, the likelihood that any of the remaining Defendants will be found less than 25% at fault diminishes. In such a case, the trial court can approve a Motion for Good Faith Finding without impeding the non-settling Defendant's protection under Section 2-1117.

In *Kotecki v. Cyclops Welding Corp.,* 146 Ill. 2d 155, (1991), this Court arrived at an accommodation between conflicting policies in the Contribution Act and Worker's Compensation Act. The Court noted that the language of the Worker's Compensation Act clearly shows an intent that an employer only be required to pay statutory benefits to its employee, while the Contribution Act requires employers to contribute to court judgments if they are partially responsible for an employee's injuries. This Court

reconciled the two statutes by allowing actions for contribution against an employer to be capped at the amount of the employer's Worker's Compensation lien. *Kotecki* at 165.

Similarly, the Court in this case should reach a reasonable accommodation in its application of the protection afforded under the Contribution Act and Section 2-1117. The procedure suggested herein is the type of practical accommodation that was arrived at in *Kotecki*. If the Court agrees, it can and should reverse the Appellate Court's decision and remand the case to the trial court for purposes of conducting an evidentiary hearing under Section 2-1117, in conjunction with Plaintiff's Motion for Good Faith Finding.

CONCLUSION

In conclusion, the Appellate Court's decision conflicts with this Court's statutory interpretation of the Contribution Act and § 2-1117 of the Code of Civil Procedure. In entering a good faith finding limited to an analysis of the pleadings, the Appellate Court failed to consider the totality of circumstances that included uncontroverted, extrinsic evidence that counter defendant Daniel Juan Rodriguez was an intentional tortfeasor. Furthermore, the Appellate Court disregarded this Court's statutory interpretation that a § 2-1117 analysis must be made before a determination that a settlement has been made in good faith under the Contribution Act. The petitioners, Karl Browder, Chicago Tube and Iron Company, and Trillium Staffing d/b/a Trillium Drivers Solutions, respectfully request that this Court reverse the Appellate Court judgment.

/s/ Francis P. Cuisinier
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 26 pages.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Francis P. Cuisinier
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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Brief with the Clerk of the Supreme Court of Illinois on June 28, 2017. I certify that I served the foregoing Brief by placing copies in envelopes with sufficient postage affixed to the persons and addresses listed below, by depositing said envelopes in a United States mail box in Chicago, Illinois before 5:00 PM on June 28, 2017.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Mitchell B. Friedman
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/s/ Francis P. Cuisinier
FRANCIS P. CUISINIER, Attorney

SUPREME COURT APPENDIX
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30707 DCF:jrp 11/19/2105 WHITE 21154-52-67

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

ANGELA ANTONICELLI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No.: 14 L 1184**
	)	
DANIEL JUAN RODRIGUEZ, ARTEMIO RAMOS, KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation, and TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTION, a Foreign Corporation,	)	
	)	
Defendants.	)	
KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, and TRILLIUM STAFFING,	)	
	)	
Counter-Plaintiffs,	)	
	)	
v.	)	
	)	
DANIEL JUAN RODRIGUEZ	)	
	)	
Counter-Defendant.	)	

ORDER

THIS CAUSE coming on to be heard for hearing on the previously filed Amended Petition for Good Faith Finding and Dismissal of Defendant, DANIEL JUAN RODRIGUEZ, due notice having been given, the Parties before the Court, Non-settling Defendants, KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, and TRILLIUM STAFFING, filing a written objection to same, this Court having heard oral argument and being full advised in the premises:

IT IS HEREBY ORDERED: SAID AMENDED PETITION is GRANTED, THIS COURT FINDING AS FOLLOWS:

A. The monetary settlement of policy limits of $20,000 is found by this Court to be in good faith under the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/2;

C 006328

4226-0

B. Plaintiff's Amended Complaint as against Defendant, DANIEL JUAN RODRIGUEZ, is dismissed with prejudice pursuant to this amicable settlement;

4272-0

C. Non-settling Defendants' counterclaim for contribution filed after this Amended Petition was filed is dismissed and barred by this good faith finding with prejudice;

D. Non-settling Defendants have the right of credit of $20,000 as against any future judgment in these proceedings in favor of Plaintiff;

E. The dismissal orders in B and C above are entered by this Court with a specific finding that no just cause exists to delay the enforcement of or appeal from said order(s) of dismissal; ~~and~~ under Rule 304(a) and 9208

F. This matter shall proceed only against the Non-settling Defendants, KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, and TRILLIUM STAFFING.

Judge

Date

Assoc. Judge Moira S. Johnson

NOV 19 2015

Circuit Court - 1836

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C06329

14-06-3023 Attorney No. 56279

APPEAL TO THE
ILLINOIS APPELLATE COURT, FIRST DISTRICT,
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,
COUNTY DEPARTMENT, LAW DIVISION

ANGELA ANTONICELLI,

Plaintiff-Appellee,

v.

DANIEL JUAN RODRIGUEZ,

Defendant-Appellee,

ARTEMIO RAMOS,

Defendant,

KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation, and TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTIONS, a Foreign Corporation,

Defendants-Appellants.

No.: 14 L 1184

Honorable Judge Moria S. Johnson

KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation, and TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTIONS, a Foreign Corporation,

Counter Plaintiffs- Appellants,

DANIEL JUAN RODRIGUEZ,

Counter Defendant-Appellee,

KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation,

and TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTIONS, a Foreign Corporation,

Third Party Plaintiffs-Appellants,

v.

COUNTRY FINANCIAL INSURANCE COMPANY, COUNTRY PREFERRED INSURANCE COMPANY, COUNTRY MUTUAL INSURANCE COMPANY, COUNTRY CAUSALITY INSURANCE COMPANY, and CHARLES HERMAN,

Third Party Defendants.

NOTICE OF APPEAL

Notice is hereby given pursuant to Supreme Court Rules 301 and 304(a) that Defendants-Counter Plaintiffs-Third Party Plaintiffs appeal from the Circuit Court of Cook County's Order of November 19, 2015, which Order dismissed Plaintiff's Amended Complaint against Defendant, Daniel Juan Rodriguez, pursuant to a finding that the Plaintiff, Angela Antonicelli, and the Defendant, Daniel Juan Rodriguez, had entered into a settlement in good faith under the Illinois Contribution Act, 740 ILSC 100/2, and from the dismissal of the Counterclaim for Contribution filed by the Defendants-Counter Plaintiffs-Third Party Plaintiffs, Karl Browder, Chicago Tube and Iron, and Trillium Staffing, against the Defendant-Counter Defendant, Daniel Juan Rodriguez. A true and correct copy that Order is attached hereto. Defendants-Counter Plaintiffs-Third Party Plaintiffs, Karl Browder, Chicago Tube and Iron, and Trillium Staffing, seek reversal of the Circuit Court's Order, reinstatement of their Counterclaim for Contribution against the Counter Defendant, Daniel Juan Rodriguez, and remand to the Circuit Court for further proceedings.

DATED: _____, 2015

Respectfully submitted,
Karl Browder, Chicago Tube and Iron, a Foreign Corporation, and Trillium Staffing d/b/a Trillium Drivers Solutions, a Foreign Corporation

By: Francis P. Cuisinier
Francis P. Cuisinier
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2017 IL App (1st) 153532
No. 1-15-3532
Order filed January 17, 2017

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ANGELA ANTONICELLI, Plaintiff-Appellee, v. DANIEL JUAN RODRIGUEZ, Defendant-Appellee, ARTEMIO RAMOS Defendant, KARL BROWDER, CHICATO TUBE AND IRON COMPANY, a Foreign Corporation, and TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTIONS, a Foreign Corporation, Defendants-Appellants, KARL BROWDER, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation, and TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTIONS, A Foreign Corporation, Counter-Plaintiffs-Appellants, v. DANIEL JUAN RODRIGUEZ, Counter-Defendant-Appellee, KARL BROWDER, CHICAGO TUBE AND	Appeal from the Circuit Court of Cook County. No. 14 L 1184 The Honorable Moira S. Johnson, Judge, presiding.

IRON COMPANY, a Foreign Corporation, and TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTIONS, A Foreign Corporation,

Third Party Plaintiffs-Appellants,

v.

COUNTRY FINANCIAL INSURANCE COMPANY, COUNTRY PREFFERED INSURANCE COMPANY, COUNTRY MUTUAL INSURANC COMPANY, COUNTRY CASIUALTY INSURANCE COMPANY and CHARLES HERMAN,

Third Party Defendants.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

Held: Trial court did not abuse its discretion in finding that co-defendant's settlement with plaintiff was entered in good faith under section 2 of the Joint Tortfeasor Contribution Act (740 ILCS 100/2 (West 2014)), where plaintiff alleged negligent, not intentional conduct. Further, the trial court was not required to consider section 2-1117 of the Code of Civil Procedure (735 ILCS 5/2-1117) (West 2014)) before entering a good faith finding.

¶ 1 While driving under the influence of cocaine, Daniel Rodriguez instigated a three vehicle accident when he made an improper U-turn and struck the car in which plaintiff, Angela Antonicelli, was a passenger. Antonicelli's car was then hit by the semi-tractor and trailer driven by Karl Browder. Antonicelli suffered severe permanent injuries. She sued Rodriguez, Browder, and others, alleging their negligence caused her injuries. Browder and the other defendants counter-sued Rodriguez for contribution. Rodriguez pled guilty to aggravated driving under the influence of drugs. He then entered into a settlement agreement with Antonicelli for the limit of his insurance policy. The trial court granted Rodriguez's petition for a finding that the settlement

was entered into in good faith and dismissed him from the amended complaint under section 2 of the Joint Tortfeasor Contribution Act (740 ILCS 100/2 (West 2014)).

¶ 2 The non-settling co-defendants appeal arguing: (i) Rodriguez acted intentionally rather than negligently in causing the accident and the Contribution Act does not permit a good faith finding in a settlement with an intentional tortfeasor and (ii) the trial court's good faith finding was an abuse of discretion because the court failed to properly consider Browder's and the co-defendants' rights under section 2-1117 of the Code of Civil Procedure (735 ILCS 5/2-1117) (West 2014)), which provides that a defendant whose fault is less than 25% is severally liable, rather than jointly and severally liable for all other damages.

¶ 3 We need not decide whether an intentional tortfeasor may enter into a good faith settlement because Antonicelli's amended complaint alleged Rodriguez was a negligent not an intentional tortfeasor. Further, the trial court was not required to consider section 2-1117 of the Code before entering a good faith finding. We thus affirm the trial court's judgment in all respects.

¶ 4 BACKGROUND

¶ 5 On November 2, 2013, at about 1:30 a.m., Angela Antonicelli was a passenger in a Toyota Scion heading eastbound on I-88 near Naperville. Three of the eastbound I-88 lanes were closed for construction. Charles Herman, the Scion's driver, was in the lane closest to the median, the only open eastbound lane. Following behind the Scion was a semi-tractor and trailer driven by Karl Browder, who worked for Chicago Tube and Iron Company and Trillium Staffing d/b/a Trillium Drivers Solutions.

¶ 6 Heading the opposite direction, westbound on I-88, was Daniel Rodriguez driving a Chrysler Pacifica. Rodriguez was under the influence of cocaine. Rodriguez made an improper

U-turn through the buffer on the median and collided with the Scion, which rotated clockwise. Browder, who was unable to stop his truck, slammed into the passenger side door, severely injuring Antonicelli. Emergency personnel extricated her from the car and took her to the hospital. She suffered multiple injuries and underwent numerous surgeries.

¶ 7 The Illinois State Police concluded that Rodriguez's improper lane usage and other traffic violations caused the accident. Rodriguez pled guilty to a Class 4 felony of aggravated driving under the influence of drugs and received a sentence of seven years imprisonment, followed by one year of mandatory supervised release. Rodriguez acknowledged he was at fault but claimed to have no independent recollection of the accident because of brain injuries he suffered in the collision.

¶ 8 Antonicelli's amended complaint names Rodriguez, Browder, and Browder's employers, Chicago Tube and Iron and Trillium Staffing d/b/a Trillium Drivers Solution. All claims alleged the defendants' negligence caused her injuries.

¶ 9 Antonicelli and Rodriguez entered into a settlement agreement for $20,000, the limits of Rodriguez's insurance policy. Rodriguez filed a petition for a finding of good faith and dismissal. Rodriguez asked the trial court to find that his agreement with Antonicelli constitutes a good faith settlement under section 2 of the Joint Tortfeasor Contribution Act (740 ILCS 100/2 (West 2014)), that Antonicelli's claims against him be dismissed in their entirety and with prejudice, and that all counterclaims for contribution by the non-settling co-defendants be dismissed with prejudice or be barred by the good faith settlement.

¶ 10 Browder, Chicago Tube, and Trillium separately filed counterclaims for contribution against Rodriguez. The counterclaims alleged that Rodriguez's intentional rather than negligent conduct caused the accident and Antonicelli's injuries.

¶ 11 After briefing and argument, the trial court granted Rodriguez's petition for a good faith finding and dismissal. Specifically, the court (i) found the monetary settlement of the insurance policy limit of $20,000 to be in good faith, (ii) dismissed with prejudice Antonicelli's amended complaint against Rodriguez, (iii) dismissed the non-settling defendants' counterclaim for contribution filed after Rodriguez's petition as barred by the good faith finding; and (iv) allowed non-settling defendants the right to credit $20,000 against any future judgment in plaintiff's favor.

¶ 12 The non-settling co-defendants ("Browder co-defendants") appeal, arguing that (i) Rodriguez acted intentionally in causing the accident and (ii) the Illinois Contribution Act does not permit a good faith finding in a settlement with an intentional tortfeasor. The Browder co-defendants also contend the trial court's good faith finding was against the manifest weight of the evidence because it failed to properly consider their rights under section 2-1117 of the Code, which limits the liability of minimally responsible defendants.

¶ 13 ANALYSIS

¶ 14 As an initial matter, Supreme Court Rule 342(a) requires an appellant's brief include "as an appendix, * * * a complete table of contents, with page references, of the record on appeal." Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). The table of contents to the appellants' brief does not comply with Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005). Instead of a table of contents to the record on appeal, the Browder co-defendants' brief contains a one-page table of contents referring to the pages of the appendix attached to the brief.

¶ 15 We remind counsel that when unsure about how to prepare a formal brief, better to seek clarification than forgiveness. When a brief fails to follow the requirements set forth in Supreme Court Rule 342(a), we may dismiss the appeal. *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51

(2004). But, the argument section of the Browder co-defendants' brief provides references to the volume and pages of the record on appeal, as required by Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Because we are able to assess whether the facts are accurate and a fair portrayal, we choose to exercise our discretion and address the issues on their merit.

¶ 16 Good Faith Finding

¶ 17 The Joint Tortfeasor Contribution Act (740 ILCS 100/1 *et seq.* (West 2014)) seeks to promote two important public policies: encouraging settlements and ensuring the equitable apportionment of damages among tortfeasors. *Johnson v. United Airlines*, 203 Ill. 2d 121, 133 (2003); *BHI Corp. v. Litgen Concrete Cutting & Coring Co.*, 214 Ill. 2d 356, 365 (2005). The Contribution Act creates a right of contribution in actions "where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, to the extent that a tortfeasor pays more than his *pro rata* share of the common liability." (Citations omitted.) *Johnson*, 203 Ill. 2d at 128. The Contribution Act also provides that a tortfeasor who settles in good faith with the injured party is discharged from contribution liability. 740 ILCS 100/2(c), (d).[1]

¶ 18 The only limitation the Contribution Act places on the settlement is that it be in "good faith." *Johnson*, 203 Ill. 2d at 128. In determining whether a settlement has been made in good

[1] Specifically, section 2 of the Contribution Act states, in pertinent part, provides:
"(c) When a release or covenant not to sue or to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.
(d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor." 740 ILCS 100/2(c), (d) (West 2014).

faith a court must strike a balance between the two important public policies of promoting the encouragement of settlements and the equitable apportionment of damages among tortfeasors. *Id.* at 133. A settlement is not in good faith if the settling parties engaged in wrongful conduct, collusion, or fraud. *Id.* at 134. But a disparity between the settlement amount and the amount of damages sought in the complaint is not an accurate measure of the good faith of a settlement. *Johnson*, 203 Ill. 2d at 136-37; *Miranda v. The Walsh Group, Ltd.*, 2013 IL App (1st) 122674, ¶ 10. Settlements may be substantially different from the results of litigation, as damages are often speculative and the probability of liability uncertain. *Ziarko v. Soo Line R.R.*, 161 Ill. 2d 267, 284 (1994); *Cellini v. Village of Gurnee*, 403 Ill. App. 3d 26, 39-40 (2010). Thus, the amount of a settlement must be evaluated in relation to the probability of recovery, the defenses raised, and the settling party's potential legal liability. *Johnson*, 203 Ill. 2d at 137; *Miranda*, 2013 IL App (1st) 122674, ¶ 10. Further, "[s]ettlements are not designed to benefit non-settling third parties." *Muro v. Abel Freight Lines, Inc.*, 283 Ill. App. 3d 416, 420 (1996). "They are instead created by the settling parties in the interests of these parties." *Id.* "If the position of a non-settling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle." *Id.*

¶ 19 We review a trial court's decision to approve a settlement for an abuse of discretion. *Johnson*, 203 Ill. 2d at 135; *Miranda*, 2013 IL App (1st) 122674, ¶ 10, which is the most deferential standard of review—next to no review at all—and is therefore traditionally reserved for decisions made by a trial judge in overseeing his or her courtroom or in maintaining the progress of a trial." *In re D.T.*, 212 Ill. 2d 347, 356 (2004). A trial court abuses its discretion where its ruling is so arbitrary or illogical that no reasonable person would adopt it. *Id.*; *1515 N. Wells, L.P. v. 1513 N. Wells, L.L.C.*, 392 Ill. App. 3d 863, 870 (2009). Questions of statutory

interpretation, however, are subject to a *de novo* standard of review. *Hall v. Henn*, 208 Ill. 2d 325, 330 (2006).

¶ 20 With these general principles in mind, we turn to the specific arguments before us.

¶ 21 Settlement With Intentional Tortfeasor

¶ 22 The Browder co-defendants claim the trial court did not have authority under the Contribution Act to make a good faith finding regarding the settlement agreement because Rodriguez was an "intentional tortfeasor," as evidenced by his guilty plea to criminal charges. This involves statutory interpretation, which, as noted, is a question of law that is reviewed *de novo*. *Hall*, 208 Ill. 2d at 330.

¶ 23 As the Browder co-defendants' correctly note, in *Gerill Corp. v. Hargrove Builders, Inc.*, 128 Ill. 2d 179 (1989), our supreme held that intentional tortfeasors are not entitled to contribution under the Act. *Id.* at 206. But *Gerill* did not address the issue raised here: whether a counterclaim asserting that the settling defendant is an intentional tortfeasor, a claim not brought by the plaintiff, can bar a finding of a good faith settlement under section 2(d) of the Contribution Act.

¶ 24 Rodriguez relies on *Pecoraro v. Balkonis*, 383 Ill. App. 3d 1028 (2008), to argue that a defendant sued in intentional tort may settle in good faith and receive the protection of the Act. In *Pecoraro*, the plaintiff, a hockey coach, was injured when one of his players threw a hockey stick at him and punched him in the temple. *Id.* at 1029. The plaintiff sued the player alleging assault and battery and the hockey association for negligence. *Id.* The association filed a contribution claim against the player. *Id.* at 1032. The player pled guilty to a criminal battery charge and settled with the plaintiff for $5,000 and assigned him his rights under two insurance policies that denied coverage. *Id.* Over the hockey association's objection, particularly as to the

adequacy of the judgment in light of the damages, which exceeded $800,000, the trial court entered an order dismissing plaintiff's claim against the player under the terms and conditions of the settlement agreement and finding that the agreement was reached in good faith under the Contribution Act. The appellate court affirmed, finding the trial court did not abuse its discretion in making its good faith finding, noting that the player did not have any assets of consequence and there was little or no probability that he could ever satisfy a significant judgment against him. *Id.* at 1039.

¶ 25 Rodriguez contends that like the settling defendant in *Pecoraro*, even if he acted intentionally, the trial court did not err in making a good faith finding, because he is afforded the protections of the Contribution Act. The Browder co-defendants argue, however, that the court in *Pecoraro* had no reason to address the issue here as the non-settling defendants there did not raise it. Nevertheless, we need not and indeed cannot make the determination that the Browder co-defendants seek based on the facts before us. Antonicelli's amended complaint alleged that Rodriguez and all other defendants engaged in negligent, not intentional, conduct. Although the Browder co-defendants raised counterclaims alleging intentional conduct after Antonicelli and Rodriguez entered into a settlement agreement, a counterclaim is "an independent cause of action, separate from a complaint ***." *Health Cost Controls v. Sevilla*, 307 Ill. App. 3d 582, 589 (1999). Thus, because the Browder co-defendants' counterclaims alleging intentional conduct are separate and independent causes of action; they do not change the nature of Antonicelli's complaint, which alleged only negligent conduct. And under the plain language of the Contribution Act, Rodriguez was permitted to enter into a good faith settlement with Antonicelli and be discharged from all liability for any contribution. 740 ILCS 100/2(d) (West 2014). *Halleck v. Coastal Building Maintenance Co.*, 269 Ill. App. 3d 887, 899 (1995). Thus, we

need not address the Browder co-defendants' contention that a trial court may not make a good faith finding in favor of an intentional tortfeasor.

¶ 26 Good Faith Finding

¶ 27 The Browder co-defendants next argue the trial court erred in entering a good faith finding because it failed to properly consider their rights under section 2-1117 of the Code of Civil Procedure (735 ILCS 5/2-1117) (West 2014)). As noted, a trial court's decision to approve a settlement is subject to an abuse of discretion standard of review. *Johnson*, 203 Ill. 2d at 135. But the Browder co-defendants ask us to determine whether a trial court must first consider section 2-1117 of the Code before entering a good faith finding, which is a question of law subject to *de novo* review. *Hall*, 208 Ill. 2d at 330.

¶ 28 Section 2-1117[2] addresses joint and several liability and protects minimally responsible defendants from paying the entire damages award. *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64, 78 (2003).

¶ 29 In *Unzicker*, the plaintiffs argued that sections 3 and 4 of the Contribution Act, which recognize a plaintiff's right to recover all of his or her damages from any responsible defendant, conflicts with section 2-1117, which eliminates a plaintiff's ability to recover the full amount of

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[2] Section 2-1117 provides:

"Except as provided in Section 2-1118, in actions on account of bodily injury or death or physical damage to property, based on negligence or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant except the plaintiff's employer, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants except the plaintiff's employer, shall be jointly and severally liable for all other damages." 740 ILCS 5/2-1117 (West 2014).

nonmedical damages from any defendant found to be less than 25% responsible for the plaintiff's injuries. *Id.* at 79-80. The supreme court disagreed, finding that those statutory provisions were not in conflict. *Id.* at 80. In explaining how the statutes work in conjunction, the court stated that "Section 2-1117 comes into play before the Contribution Act is applied to determine liability. Any defendant who pays damages in an amount greater than his or her proportionate share of fault can then seek contribution under the Contribution Act." *Id.*

¶ 30 The Browder co-defendants contend that under this language in *Unzicker*, a trial court must first consider a non-settling defendant's rights under section 2-1117 before making a good faith finding under the Contribution Act. We disagree. First, in *Unzicker*, after a trial, the jury entered a verdict in plaintiff's favor and apportioned the fault between the defendants—finding that one defendant was 1% liable and the other was 99% liable. The plaintiff appealed arguing, in part, that section 2-1117 conflicts with the Contribution Act. As noted, the supreme court rejected this argument. The court did state that section 2-1117 comes into play before the Contribution Act, but that was in the context of apportioning fault after trial, and not a settlement agreement. The court did not say that before entering a good faith finding regarding the settlement by one defendant, a trial court must first consider how section 2-1117 of the Code affects other defendants' liability.

¶ 31 Thus, the appellants cite nothing in the statutes or the case law supporting their argument that a trial court must make a fault determination before entering a good faith finding. And, indeed, requiring a trial court to make a determination as to each defendant's fault before finding that a settlement agreement was entered into in good faith would be impracticable and would defeat the purpose of section 2 of the Contribution Act of encouraging compromise and settlement in the absence of bad faith, fraud, or collusion. *Pecoraro*, 383 Ill. App. 3d at 1038.

¶ 32 Although we do not disagree with the Browder co-defendants' contention that a reasonable jury may conclude that Rodriguez, who was under the influence of cocaine at the time of the accident, was the sole and proximate cause of the accident, that is not a factor the trial court needs to take into consideration in making a good faith finding. As noted, "[s]ettlements are not designed to benefit non-settling third parties." *Muro*, 283 Ill. App. 3d at 420. "They are instead created by the settling parties in the interests of these parties." *Id.* "If the position of a non-settling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle." *Id.* No evidence has been presented showing that the settling parties engaged in wrongful conduct, collusion, or fraud. And a disparity between the settlement amount and the amount of damages sought in the amended complaint is not an accurate measure of the good faith of a settlement. *Johnson*, 203 Ill. 2d at 136-37. Thus, we affirm the trial court's good faith finding.

¶ 33 Affirmed.

SUPREME COURT OF ILLINOIS

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May 24, 2017

In re: Angela Antonicelli, Appellee, v. Daniel Juan Rodriguez, Appellee (Artemio Ramos et al.) Karl Browder et al., etc., Appellants.
Appeal, Appellate Court, First District.
121943

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

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

ANGELA ANTONICELLI, Plaintiff, v. DANIEL JUAN RODRIGUEZ, ARTEMIO RAMOS, KARL BROWDER, RAUL SAUCEDO, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation, TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTION, a Foreign Corporation, and RYDER TRUCK RENTAL, INC., a Foreign Corporation, Defendants.	)	Court No. 14 L 1184

PLAINTIFF'S FIRST AMENDED COMPLAINT AT LAW

COUNT I
(DANIEL JUAN RODRIGUEZ)

NOW COMES the Plaintiff, ANGELA ANTONICELLI, by and through her attorneys, MORICI, FIGLIOLI & ASSOCIATES, and complaining of the Defendant, DANIEL JUAN RODRIGUEZ, alleges as follows:

1. That on November 2, 2013, Plaintiff, ANGELA ANTONICELLI, was a passenger in a motor vehicle traveling in an eastbound direction on Highway I-88 at or near the milepost 120.5 in the Township of Naperville, County of DuPage, State of Illinois.

2. That at the time and place aforesaid, Defendant, DANIEL JUAN RODRIGUEZ, operated and maintained a motor vehicle owned by Defendant Artemio Ramos on Highway I-88, traveling in a westbound direction on Highway I-88 at or near the milepost 120.5 in the Township of Naperville, County of DuPage, State of Illinois.

3. That at said time and place, a collision occurred between the vehicle operated by Defendant, DANIEL JUAN RODRIGUEZ, and the vehicle in which by Plaintiff, ANGELA ANTONICELLI was a passenger.

4. That at said time and place, Defendant, KARL BROWDER, was employed by Defendant, TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTION, who provided Defendant BROWDER to Defendant, CHICAGO TUBE AND IRON COMPANY, pursuant to a contract to provide drivers.

5. That at the time and place aforesaid, Defendant, KARL BROWDER, operated and maintained a motor vehicle known as a tractor owned by Defendants, RAUL SAUCEDO and/or RYDER TRUCK RENTAL, INC., on Highway I-88, traveling in an eastbound direction on Highway I-88 at or near the milepost 120.5 in the Township of Naperville, County of DuPage, State of Illinois. Said tractor was pulling a trailer owned by Defendant, CHICAGO TUBE AND IRON COMPANY.

6. That at said time and place, a collision occurred between the vehicle operated by Defendant, KARL BROWDER, and the vehicle operated by Plaintiff, ANGELA ANTONICELLI.

7. That at all times aforesaid, it was the duty of the Defendant to exercise ordinary care for the safety of the Plaintiff and to be free from negligence.

8. That the Defendant was then and there guilty of one or more of the following careless and negligent acts and/or omissions:

   (a) Failed to keep and/or have kept the automobile under control at all times;

   (b) Failed to sound the horn on said vehicle so as to give warning of its approach, violation of 625 ILCS 5/12-601;

   (c) Failed to keep a proper lookout so as to avoid a collision;

   (d) Made a U-turn on the cross over between eastbound and westbound lanes of I-88 when it was improper and unsafe to do so;

   (e) Failed to yield the right of way to eastbound I-88 traffic;

   (f) Entered the lanes of eastbound I-88 traffic when it was not safe to do so;

   (g) Was otherwise negligent in his acts and omissions.

9. That the aforesaid careless and negligent acts and/or omissions of the Defendant were a proximate cause of said collision and Plaintiff's personal injuries as hereinafter mentioned.

10. That as a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Defendant, the Plaintiff then and there sustained severe and permanent injuries, and was, and will be hindered and prevented from attending to his usual duties and affairs of life, and has lost, and will lose, the value of that time as aforementioned. Further, the Plaintiff suffered great pain and anguish, both in mind and body, and will in the future, continue to suffer. The Plaintiff further expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of said injuries.

WHEREFORE, the Plaintiff, ANGELA ANTONICELLI, demands judgment against the Defendant, DANIEL JUAN RODRIGUEZ, in a dollar amount to satisfy the jurisdictional limitation of this Court and said additional amounts as the jury and the Court shall deem proper, and additionally, cost of said suit.

COUNT II
(ARTEMIO RAMOS)

NOW COMES the Plaintiff, ANGELA ANTONICELLI, by and through her attorneys, MORICI, FIGLIOLI & ASSOCIATES, and complaining of the Defendant, ARTEMIO RAMOS, alleges as follows:

1. - 6. Plaintiff re-alleges and reasserts Paragraphs 1 through 6 of Count I as Paragraphs 1 through 6 of Count II as though fully set forth.

7. At some time prior to and/or on November 2, 2013, the Defendant, ARTEMIO RAMOS, placed and entrusted the motor vehicle into the hands and control of DANIEL JUAN RODRIGUEZ.

8. At all times pertinent hereto, it was the duty of the Defendant, to exercise ordinary care in the entrustment of motor vehicles so as not to cause harm or injury to the public at large and to the Plaintiff in particular.

9. Notwithstanding their aforesaid duties, the Defendant was careless and negligent in the entrustment of the aforesaid vehicle in one or more of the following respects:

   (a) Failed to obtain or inspect the driver's license of the individual to whom he loaned the vehicle;

(b) Failed to learn or inquire about the driving record of DANIEL JUAN RODRIGUEZ when, had he done so, he should have learned that he was a reckless and/or incompetent driver who posed a danger and said failure proximately caused Plaintiff's injuries;

(b) Knew based on his history that DANIEL JUAN RODRIGUEZ was a reckless, incompetent, and/or overly aggressive driver who posed a danger to pedestrians and motorists and said qualities proximately caused Plaintiff's injuries;

(c) Knew or should have known that DANIEL JUAN RODRIGUEZ was not capable of safely driving Defendant's vehicle at the time the vehicle was entrusted to Defendant, DANIEL JUAN RODRIGUEZ;

(d) Was otherwise negligent in his acts and omissions.

10. As a direct and proximate result of one or more of the foregoing careless and negligent acts on the part of the Defendant's vehicle then and there operated by DANIEL JUAN RODRIGUEZ collided with the vehicle in which Plaintiff was a passenger.

11. That as a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Defendant, the Plaintiff then and there sustained severe and permanent injuries, and was, and will be, hindered and prevented from attending to her usual duties and affairs of life, and has lost, and will lose, the value of that time as aforementioned. Further, Plaintiff suffered great pain and anguish, both in mind and body, and will continue to suffer in the future. Plaintiff further expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of said injuries.

WHEREFORE, the Plaintiff, ANGELA ANTONICELLI, demands judgment against the Defendant, ARTEMIO RAMOS, in a dollar amount to satisfy the jurisdictional limitation of this Court and said additional amounts as the jury and the Court shall deem proper, and additionally, cost of said suit.

COUNT III
(KARL BROWDER)

NOW COMES the Plaintiff, ANGELA ANTONICELLI, by and through her attorneys, MORICI, FIGLIOLI & ASSOCIATES, and complaining of the Defendant, KARL BROWDER, alleges as follows:

1. - 6. Plaintiff re-alleges and reasserts Paragraphs 1 through 6 of Count I as Paragraphs 1 through 6 of Count III as though fully set forth.

7. That at all times aforesaid, it was the duty of the Defendant to exercise ordinary care for t he safety of the Plaintiff and to be free from negligence.

8. That the Defendant was then and there guilty of one or more of the following careless and negligent acts and/or omissions:

(a) Drove said vehicle at a speed which was greater than reasonable and proper, in violation of 625 ILCS 5/11-601;

(b) Failed to keep and/or have kept the automobile under control at all times;

(c) Drove said vehicle without brakes adequate to control its movement, and to stop and hold it, in violation of 625 ILCS 5/12-301;

(d) Failed to sound the horn on said vehicle so as to give warning of its approach, in violation of 625 ILCS 5/12-601;

(e) Failed to decrease the speed of said vehicle so as to avoid colliding with Plaintiff's vehicle;

(f) Failed to keep a proper lookout so as to avoid a collision;

(g) Failed to keep a safe distance between his vehicle and the vehicle in which Plaintiff was a passenger;

(h) Was otherwise negligent in his acts and omissions.

9. That the aforesaid careless and negligent acts and/or omissions of the Defendant were a proximate cause of said collision and Plaintiff's personal injuries as hereinafter mentioned.

10. That as a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Defendant, the Plaintiff then and there sustained severe and permanent injuries, and was, and will be hindered and prevented from attending to his usual duties and affairs of life, and has lost, and will lose, the value of that time as aforementioned. Further, the Plaintiff suffered great pain and anguish, both in mind and body, and will in the future, continue to suffer. The Plaintiff further expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of said injuries.

WHEREFORE, the Plaintiff, ANGELA ANTONICELLI, demands judgment against the Defendant, KARL BROWDER, in a dollar amount to satisfy the jurisdictional limitation of this Court and said additional amounts as the jury and the Court shall deem proper, and additionally, cost of said suit.

COUNT IV
(RAUL SAUCEDO)

NOW COMES the Plaintiff, ANGELA ANTONICELLI, by and through her attorneys, MORICI, FIGLIOLI & ASSOCIATES, and complaining of the Defendant, RAUL SAUCEDO, alleges as follows:

1. - 6. Plaintiff re-alleges and reasserts Paragraphs 1 through 6 of Count I as Paragraphs 1 through 6 of Count IV as though fully set forth.

7. At some time prior to the collision of November 2, 2013, the Defendant, RAUL SAUCEDO, placed and entrusted the tractor trailer into the hands and control of KARL BROWDER.

8. At all times pertinent hereto, it was the duty of the Defendant, to exercise ordinary care in the operation of their business and entrustment of motor vehicles so as not to cause harm or injury to the public at large and to the Plaintiff in particular.

9. Notwithstanding their aforesaid duties, the Defendant, was careless and negligent in the entrustment of the aforesaid vehicle in one or more of the following respects:

(a) Failed to obtain or inspect the driver's license of the individual to whom they loaned the vehicle;

(b) Employed KARL BROWDER as a truck driver and entrusted him to operate his vehicle without first determining his capability to do so safely, proximately causing Plaintiff's injuries;

(c) Failed to learn or inquire about the driving record of KARL BROWDER when, had he done so, he should have learned that he was a reckless and incompetent driver who posed a danger and said failure proximately cause Plaintiff's injuries;

(d) Failed to properly train KARL BROWDER in the safe operation of a tractor trailer such that KARL BROWDER negligently struck Plaintiff proximately causing Plaintiff's injuries;

(e) Knew based on his history that KARL BROWDER was a reckless, incompetent, overly aggressive driver who posed a danger to pedestrians and motorists and said qualities proximately caused Plaintiff's injuries;

(f) Was otherwise negligent in his acts and omissions.

10. As a direct and proximate result of one or more of the foregoing careless and negligent acts on the part of the Defendant's vehicle then and there operated by KARL BROWDER collided with the person of the Plaintiff.

11. That as a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Defendant, the Plaintiff then and there sustained severe and permanent injuries, and was, and will be, hindered and prevented from attending to her usual duties and affairs of life, and has lost, and will lose, the value of that time as aforementioned. Further, Plaintiff suffered great pain and anguish, both in mind and body, and will continue to suffer in the future. Plaintiff further expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of said injuries.

WHEREFORE, the Plaintiff, ANGELA ANTONICELLI, demands judgment against the Defendant, RAUL SAUCEDO, in a dollar amount to satisfy the jurisdictional limitation of this Court and said additional amounts as the jury and the Court shall deem proper, and additionally, cost of said suit.

COUNT V
(CHICAGO TUBE AND IRON COMPANY)

NOW COMES the Plaintiff, ANGELA ANTONICELLI, by and through her attorneys, MORICI, FIGLIOLI & ASSOCIATES, and complaining of the Defendant, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation, alleges as follows:

1. - 6. Plaintiff re-alleges and reasserts Paragraphs 1 through 6 of Count I as Paragraphs 1 through 6 of Count V as though fully set forth.

7. That at all times aforesaid, it was the duty of the Defendant to exercise ordinary care for the safety of the Plaintiff and to be free from negligence.

8. That the Defendant was then and there guilty of one or more of the following careless and negligent acts and/or omissions:

(a) Failed to obtain or inspect the driver's license of the individual to whom they loaned the vehicle;

(b) Employed KARL BROWDER as a truck driver and entrusted him to operate his vehicle without first determining his capability to do so safely, proximately causing Plaintiff's injuries;

(c) Failed to learn or inquire about the driving record of KARL BROWDER when, had he done so, he should have learned that he was a reckless and incompetent driver who posed a danger and said failure proximately cause Plaintiff's injuries;

(d) Failed to properly train KARL BROWDER in the safe operation of a tractor trailer such that KARL BROWDER negligently struck Plaintiff proximately causing Plaintiff's injuries;

(e) Knew based on his history that KARL BROWDER was a reckless, incompetent, overly aggressive driver who posed a danger to pedestrians and motorists and said qualities proximately caused Plaintiff's injuries;

(f) Was otherwise negligent in his acts and omissions.

9. That the aforesaid careless and negligent acts and/or omissions of the Defendant were a proximate cause of said collision and Plaintiff's personal injuries as hereinafter mentioned.

10. That as a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Defendant, the Plaintiff then and there sustained severe and permanent injuries, and was, and will be hindered and prevented from attending to his usual duties and affairs of life, and has lost, and will lose, the value of that time as aforementioned. Further, the Plaintiff suffered great pain and anguish, both in mind and body, and will in the future, continue to suffer. The Plaintiff further expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of said injuries.

WHEREFORE, the Plaintiff, ANGELA ANTONICELLI, demands judgment against the Defendant, CHICAGO TUBE AND IRON COMPANY, a Foreign Corporation, in a dollar amount to satisfy the jurisdictional limitation of this Court and said additional amounts as the jury and the Court shall deem proper, and additionally, cost of said suit.

COUNT VI
(TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTION)

NOW COMES the Plaintiff, ANGELA ANTONICELLI, by and through her attorneys, MORICI, FIGLIOLI & ASSOCIATES, and complaining of the Defendant, TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTION, a Foreign Corporation, alleges as follows:

1. - 6. Plaintiff re-alleges and reasserts Paragraphs 1 through 6 of Count I as Paragraphs 1 through 6 of Count VI as though fully set forth.

7. That at all times aforesaid, it was the duty of the Defendant to exercise ordinary care for the safety of the Plaintiff and to be free from negligence.

8. That the Defendant was then and there guilty of one or more of the following careless and negligent acts and/or omissions:

(a) Drove said vehicle at a speed which was greater than reasonable and proper, in violation of 625 ILCS 5/11-601;

(b) Failed to keep and/or have kept the automobile under control at all times;

(c) Drove said vehicle without brakes adequate to control its movement, and to stop and hold it, in violation of 625 ILCS 5/12-301;

(d) Failed to sound the horn on said vehicle so as to give warning of its approach, in violation of 625 ILCS 5/12-601;

(e) Failed to decrease the speed of said vehicle so as to avoid colliding with Plaintiff's vehicle;

(f) Failed to keep a proper lookout so as to avoid a collision;

(g) Failed to keep a safe distance between his vehicle and the vehicle in which Plaintiff was a passenger;

(h) Was otherwise negligent in his acts and omissions.

9. That the aforesaid careless and negligent acts and/or omissions of the Defendant were a proximate cause of said collision and Plaintiff's personal injuries as hereinafter mentioned.

10. That as a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Defendant, the Plaintiff then and there sustained severe and permanent injuries, and was, and will be hindered and prevented from attending to his usual duties and affairs of life, and has lost, and will lose, the value of that time as aforementioned. Further, the Plaintiff suffered great pain and anguish, both in mind and body, and will in the future, continue to suffer. The Plaintiff further expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of said injuries.

WHEREFORE, the Plaintiff, ANGELA ANTONICELLI, demands judgment against the Defendant, TRILLIUM STAFFING d/b/a TRILLIUM DRIVERS SOLUTION, a Foreign Corporation,, in a dollar amount to satisfy the jurisdictional limitation of this Court and said additional amounts as the jury and the Court shall deem proper, and additionally, cost of said suit.

COUNT VII
(RYDER TRUCK RENTAL, INC.)

NOW COMES the Plaintiff, ANGELA ANTONICELLI, by and through her attorneys, MORICI, FIGLIOLI & ASSOCIATES, and complaining of the Defendant, RYDER TRUCK RENTAL, INC., a Foreign Corporation, alleges as follows:

1. - 6. Plaintiff re-alleges and reasserts Paragraphs 1 through 6 of Count I as Paragraphs 1 through 6 of Count VII as though fully set forth.

7. That at all times aforesaid, it was the duty of the Defendant to exercise ordinary care for the safety of the Plaintiff and to be free from negligence.

8. That the Defendant was then and there guilty of one or more of the following careless and negligent acts and/or omissions:

(a) Failed to obtain or inspect the driver's license of the individual to whom they loaned the vehicle;

(b) Employed KARL BROWDER as a truck driver and entrusted him to operate his vehicle without first determining his capability to do so safely, proximately causing Plaintiff's injuries;

(c) Failed to learn or inquire about the driving record of KARL BROWDER when, had he done so, he should have learned that he was a reckless and incompetent driver who posed a danger and said failure proximately cause Plaintiff's injuries;

(d) Failed to properly train KARL BROWDER in the safe operation of a tractor trailer such that KARL BROWDER negligently struck Plaintiff proximately causing Plaintiff's injuries;

(e) Knew based on his history that KARL BROWDER was a reckless, incompetent, overly aggressive driver who posed a danger to pedestrians and motorists and said qualities proximately caused Plaintiff's injuries;

(f) Was otherwise negligent in his acts and omissions.

9. That the aforesaid careless and negligent acts and/or omissions of the Defendant were a proximate cause of said collision and Plaintiff's personal injuries as hereinafter mentioned.

10. That as a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Defendant, the Plaintiff then and there sustained severe and permanent injuries, and was, and will be hindered and prevented from attending to his usual duties and affairs of life, and has lost, and will lose, the value of that time as aforementioned. Further, the Plaintiff suffered great pain and anguish, both in mind and body, and will in the future, continue to suffer. The Plaintiff further expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of said injuries.

WHEREFORE, the Plaintiff, ANGELA ANTONICELLI, demands judgment against the Defendant, RYDER TRUCK RENTAL, INC., a Foreign Corporation, in a dollar amount to satisfy the jurisdictional limitation of this Court and said additional amounts as the jury and the Court shall deem proper, and additionally, cost of said suit.

By:_____
Attorneys for Plaintiff

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