THE SUPREME COURT OF MISSOURI

No. SC98169

MARY J. MOORE

Plaintiff/Appellant

vs.

BI-STATE DEVELOPMENT AGENCY d/b/a METRO

Defendant/Respondent

Appeal from the Circuit Court of the City of St. Louis
The Honorable Christopher E. McGraugh, Circuit Judge

SUBSTITUTE BRIEF OF APPELLANT

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JURISDICTIONAL STATEMENT

This is an appeal from a final judgment in a civil case. On May 9, 2018, a jury returned a verdict in favor of the plaintiff, Mary Moore, in the amount of $1,878,000, for personal injuries that she had suffered as the result of the negligent operation of a bus owned and operated by the defendant, Bi-State Development Agency. App. A1; L.F. 13. On that same day, the trial court entered judgment on the verdict. App. A2; L.F. 14. Bi-State filed post-trial motions on June 8, 2018, including a motion for remittitur. L.F. 20. On August 31, 2018, the trial court granted the motion for remittitur in part. App. A5; L.F. 48. On September 12, 2018, the trial court entered an amended final judgment reducing the jury's award to $420,606. App. A14; L.F. 50. On September 14, 2019, Ms. Moore filed her notice of appeal to the Missouri Court of Appeals, Eastern District. L.F. 51.

On August 27, 2019, the Court of Appeals issued an opinion reversing the judgment of the trial court and remanding for entry of a new judgment consistent with its opinion. Slip op.; App. A16. On September 11, 2019, Bi-State filed a motion for rehearing and application for transfer with the Court of Appeals, both of which were denied on September 30, 2019. On October 15, 2019, Bi-State filed an application for transfer with this Court, which Bi-State amended on October 17, 2019. On November 19, 2019, the Court sustained the application and ordered transfer.

This appeal does not involve the validity of a treaty or statute of the United States, a statute or provision of the Constitution of this state, or title to any state office, nor is it a case in which the punishment of death was ordered. Pursuant to Mo. Const. art. V, §§ 3 and 15, original jurisdiction of this appeal was vested in the Missouri Court of Appeals. In

accordance with Rule 83.04, this Court transferred the appeal after opinion by the Missouri Court of Appeals and after that appellate court's denial of a timely application for transfer.

STATEMENT OF FACTS

This action concerns personal injuries that Bi-State Development Agency caused Mary J. Moore through Bi-State's negligent operation of a 16-passenger bus. A jury returned its verdict awarding Ms. Moore compensatory damages of $1,878,000. Applying the sovereign immunity damage limit provided in Mo. Rev. Stat. § 537.610, the trial court reduced that award to $420,606. The Court of Appeals reversed, holding that Mo. Rev. Stat. 70.429—which incorporated federal safety regulations requiring subject motor carriers to satisfy judgments, such as that obtained by Ms. Moore, up to $5,000,000—conflicts with § 537.610, was adopted later, and is specific where § 537.610 is general, and thus made the trial court's order of remittitur erroneous.

The Underlying Incident

On April 19, 2013, one of Bi-State's drivers was operating a Bi-State Call-A-Ride bus in the City of St. Louis. Tr. 192:19-22.[1] Bi-State's Call-A-Ride buses, like the one Bi-State's driver was operating that day, seat 16 to 18 passengers and weigh 3.5 to 4.5 tons. Tr. 180:10-13; L.F. 34:3.[2]

Bi-State's driver was operating the bus at 37 MPH even though the posted speed limit was 25 MPH. Tr. 139:19-140:1. Bi-State's driver did not notice the stop sign at North Sarah Street and Enright Avenue until just before she reached the intersection. Tr. 140:11-142:21, 180:10-13. When she finally noticed the sign, she slammed on her brakes, causing

[1] The trial transcript is cited herein as "Tr." followed by page and line.

[2] The electronic legal file is cited herein as "L.F." followed by the assigned document number and, where applicable, the page number from the document.

the Bi-State bus to jerk to the right and sideswipe a school bus. Tr. 140:11-142:21, 180:10-13. The school bus was legally parked on the curb with its flashing lights on, having just picked up a child on his way to school. Tr. 195:5-196:9.

Ms. Moore was the driver of the school bus. Tr. 183:22-184:22. The impact from the collision jolted her. Tr. 196:10-25. Within hours of the collision, Ms. Moore began to experience pain in her lower back that kept her from standing or walking. Tr. 198:25-199:18. Ms. Moore saw a doctor the same day. Tr. 199:19-200:1.

The pain and immobility did not dissipate and, instead, continued to increase over time. Tr. 200:2-205:21. Over the next five years, Ms. Moore had to seek treatment from physical therapists, pain management doctors, emergency room doctors, and orthopedic specialists on more than 57 occasions to treat pain and immobility caused by the collision. Tr. 200:2-205:21. As a result of her progressively worsening condition, Ms. Moore became isolated, could no longer drive or participate in activities with her local church, and discontinued nearly everything she had enjoyed doing prior to her injury. Tr. 207:6-12, 244:5-249:22, 251:23-256:21, 261:21-270:2.

Ultimately, Ms. Moore's doctors determined that her condition could only be treated through multiple surgeries. Tr. 206:1-13.

Relevant Procedural History

On September 1, 2016, Ms. Moore filed her petition in the Circuit Court for the City of St. Louis. L.F. 2. The petition named both Bi-State and its driver, Paula Crayton, as defendants. L.F. 2. Count I of the petition alleged that Bi-State's negligent operation of the Call-A-Ride bus through the agency of Ms. Crayton had caused Ms. Moore's injuries. L.F.

2. Count II alleged that Ms. Crayton's negligent operation of the bus had caused Ms. Moore's injuries. L.F. 2.

On January 10, 2017, the defendants' counsel filed a suggestion of bankruptcy in the action, representing that Ms. Crayton had filed a petition for relief under Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. §§ 701, et seq. L.F. 5. On January 11, 2017, Ms. Moore voluntarily dismissed her claim against Ms. Crayton. L.F. 7.

Following a three-day trial, the jury returned a verdict in favor of Ms. Moore. App. A1; L.F. 13.[3] The jury awarded Ms. Moore $1,878,000 for the damages she suffered due to Bi-State's negligence. App. A1; L.F. 13. The trial court initially entered a final judgment on the jury's verdict awarding Ms. Moore $1,878,000, plus costs. App. A2; L.F. 14.

Bi-State filed separate motions for new trial and remittitur. L.F. 20, 21. In the motion for remittitur, Bi-State argued that the verdict must be reduced pursuant to the liability limitations stated in § 537.610, which addresses sovereign immunity and waivers of the same. L.F. 21:3-4. Ms. Moore opposed Bi-State's motion, arguing that the liability limitations in § 537.610 do not control because § 70.429, which adopts 49 C.F.R. § 387.1, *et seq*., obligated Bi-State to satisfy judgments of $5,000,000 or less for personal injuries arising out of its negligent operation of buses capable of seating 16 or more passengers. L.F. 29:1-9.

The trial court granted the motion for remittitur in part, ruling that § 70.429 and the federal safety regulations did not supersede the liability limitation in § 537.610. L.F. 48.

[3] The contemporaneously filed Appendix to Substitute Brief of Appellant is cited herein as "App. A" followed by the applicable page citation from the appendix.

On September 12, 2018, the trial court entered an amended judgment awarding Ms. Moore $420,606. L.F. 50.

On September 14, 2019, Ms. Moore filed a notice of appeal asserting that the trial court had erred by remitting the verdict. L.F. 51.

The Court of Appeals Opinion

On August 27, 2019, the Missouri Court of Appeals, Eastern District, issued an opinion holding that the trial court had erred by amending the judgment to reduce Ms. Moore's award to $420,606. The Court of Appeals reversed the amended judgment and remanded the action for purposes of entering a new judgment consistent with its opinion. Slip op. at 10; App. A25.

The Court of Appeals first analyzed the scope and applicability of both § 537.610 and § 70.429. Slip op. at 3-7; App. A18-22. It found that Bi-State is a public entity entitled to the protections of sovereign immunity as codified in § 537.600. Slip op. at 3-4; App. A18-19. The Court of Appeals noted that, under § 537.610, the liability of a public entity like Bi-State is capped for all claims where sovereign immunity is waived through the application of §§ 537.600 to 537.650. Slip op. at 4; App. A19.

The Court of Appeals found that § 70.429 "applies specifically to Bi-State." Slip op. at 5; App. A20. It also determined that this statute adopted and required Bi-State to comply with the Federal Motor Carrier Safety Regulations. The Court held that Part 387 of those regulations required Bi-State to satisfy judgments of up to $5,000,000 for personal injury claims arising out of the negligent operation of buses capable of seating 16 passengers or more. Slip op. at 5-7; App. A20-22.

Based on this analysis, the Court of Appeals determined that the question presented on appeal was "whether Section 70.429, which mandates Bi-State's compliance with the federal regulations requiring a ***minimum financial responsibility of five million dollars***, conflicts with Section 537.610, which limits Bi-State as a public entity to a ***maximum financial responsibility of three hundred thousand dollars*** (as adjusted for inflation)." Slip op. at 7; App. A22 (emphasis in original). The Court concluded that the two statutes are "in obvious conflict" because "Bi-State cannot comply with both statutes concurrently":

> ***Sections 70.429 and 537.610 are in obvious conflict***. Absent the conflicting directive of Section 70.429, Section 537.600 applies to Bi-State as a sovereignly immune public entity and limits Bi-State's financial responsibility for personal injury awards to the statutory caps set forth in Section 537.610. Section 70.429, on the other hand, expressly requires Bi-State to accept financial responsibility, under the facts of this case, up to five million dollars, substantially in excess of the statutory caps. ***Because Bi-State cannot comply with both statutes concurrently, this conflict must be resolved under canons of statutory interpretation***.

Slip op. at 7-8; App. A22-23 (emphasis added) (internal citations omitted).

Regarding the canons of statutory interpretation, the Court of Appeals stated that "a chronologically later statute, which functions in a particular way will prevail over an earlier statute of a more general nature, and the latter statute will be regarded as an exception to or qualification of the earlier general statute." Slip op. at 8; App. A23 (internal citations and quotations omitted). Relying on this canon, the Court of Appeals found that § 70.429 must control over § 537.610 because the former was both more specific and enacted later in time. Slip op. at 8-9; App. A23-24.

With respect to specificity, the Court of Appeals noted that, while § 537.610 applies generally to all types of claims and all types of public entities, § 70.429 applies solely to Bi-State and specifically to personal injury claims arising out of the negligent operation of its buses:

> Here, the later-enacted Section 70.429 is plainly more specific in both language and application than the general sovereign immunity tort liability caps applying to all public entities in Section 537.610. Indeed, the language of Section 70.429 is so specific that it only applies to one entity – Bi-State. Additionally, Section 70.429 references regulations applying only to a narrow type of claim: personal injury actions involving the negligent operation of Bi-State's buses.

Slip op. at 8; App. A23.

With respect to the order of enactment, the Court of Appeals noted that "in 1988, the Supreme Court of Missouri held Bi-State was a public entity falling under the liability protections of Section 537.600, RSMo. 1986" and that, in 1989, § 537.600, RSMo. had been amended to clarify Bi-State's inclusion as a "public entity." Slip op. at 3-4; App. A18-19. The Court of Appeals then noted that § 70.429 had been passed in 1993 – five years after the Missouri Supreme Court's opinion in *Trimble* and four years after the statutory amendment. Slip op. at 4-5; App. A19-20.

The Court of Appeals held that it was required to "give effect to the Missouri Legislature's decision to enact Section 70.429" and that the trial court had erred by reducing Ms. Moore's award based on the liability limitations of § 537.610:

> Therefore, we must give effect to the Missouri Legislature's decision to enact Section 70.429, a statute specifically requiring Bi-State's compliance with the DOT's safety regulations, including the regulations requiring that Bi-State

> carry a minimum financial responsibility of five-million dollars for personal injury claims involving its sixteen-passenger Bi-State Call-A-Ride vehicles. Although the canons of statutory construction are not intended to be rigidly applied, the canons in this case lead us to reasonably conclude that the more specific Section 70.429 controls over the more general Section 537.610.
>
> * * *
>
> Accordingly, because we find Section 70.429 governs the amount of damages Moore may be awarded against Bi-State in her personal injury action based upon Bi-State's negligent operation of its Call-A-Ride bus, we find the trial court erred in granting Bi-State's motion for remittitur and reducing Moore's award based on the liability limitations in Section 537.610.

Slip op. at 9, 10; App. A24, 25.

POINT RELIED ON

I. THE TRIAL COURT ERRED BY GRANTING BI-STATE'S MOTION FOR REMITTITUR AND ENTERING AN AMENDED JUDGMENT REDUCING THE JUDGMENT AMOUNT FROM $1,878,000 TO $420,606 PURSUANT TO MO. REV. STAT. § 537.610, BECAUSE THE TRIAL COURT'S ORDER AND AMENDED JUDGMENT WERE CONTRARY TO MO. REV. STAT. § 70.429, IN THAT (A) PURSUANT TO § 70.429 AND 49 C.F.R. § 387.1, ET SEQ., FEDERAL REGULATIONS ADOPTED BY THAT STATUTE, BI-STATE IS REQUIRED TO SATISFY ALL JUDGMENTS OF $5,000,000 OR LESS FOR PERSONAL INJURIES CAUSED BY THE NEGLIGENT OPERATION OF ITS BUSES WITH A SEATING CAPACITY OF 16 PEOPLE OR MORE, AND (B) THIS REQUIREMENT, WHICH IS SPECIFIC TO BI-STATE AND THE NEGLIGENT OPERATION OF ITS BUSES, CONFLICTS WITH, WAS ENACTED LATER THAN, AND CONTROLS OVER THE GENERAL LIABILITY LIMITATION OF $420,606 PROVIDED IN § 537.610, SUCH THAT JUDGMENT SHOULD HAVE BEEN ENTERED FOR THE ORIGINAL JUDGMENT AMOUNT OF $1,878,000.

Bachtel v. Miller County Nursing Home Dist., 110 S.W.3d 799 (Mo. banc 2003)

S. Metro Fire Prot. Dist. v. City of Lee's Summit, 278 S.W.3d 659 (Mo. banc 2009)

Mo. Rev. Stat. § 74.429

49 C.F.R. § 387.1, *et seq.*

ARGUMENT

I. THE TRIAL COURT ERRED BY GRANTING BI-STATE'S MOTION FOR REMITTITUR AND ENTERING AN AMENDED JUDGMENT REDUCING THE JUDGMENT AMOUNT FROM $1,878,000 TO $420,606 PURSUANT TO MO. REV. STAT. § 537.610, BECAUSE THE TRIAL COURT'S ORDER AND AMENDED JUDGMENT WERE CONTRARY TO MO. REV. STAT. § 70.429, IN THAT (A) PURSUANT TO § 70.429 AND 49 C.F.R. § 387.1, ET SEQ., FEDERAL REGULATIONS ADOPTED BY THAT STATUTE, BI-STATE IS REQUIRED TO SATISFY ALL JUDGMENTS OF $5,000,000 OR LESS FOR PERSONAL INJURIES CAUSED BY THE NEGLIGENT OPERATION OF ITS BUSES WITH A SEATING CAPACITY OF 16 PEOPLE OR MORE, AND (B) THIS REQUIREMENT, WHICH IS SPECIFIC TO BI-STATE AND THE NEGLIGENT OPERATION OF ITS BUSES, CONFLICTS WITH, WAS ENACTED LATER THAN, AND CONTROLS OVER THE GENERAL LIABILITY LIMITATION OF $420,606 PROVIDED IN § 537.610, SUCH THAT JUDGMENT SHOULD HAVE BEEN ENTERED FOR THE ORIGINAL JUDGMENT AMOUNT OF $1,878,000.

Standard of Review

"Statutory interpretation is an issue of law that this Court reviews de novo." *Newsome v. Kansas City, Mo. Sch. Dist.*, 520 S.W.3d 769, 780 (Mo. banc 2017) (internal citation omitted). "The primary rule of statutory interpretation is to ascertain the intent of

the legislature from the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning." *S. Metro Fire Prot. Dist. v. City of Lee's Summit*, 278 S.W.3d 659, 666 (Mo. banc 2009) (internal quotation omitted).

Argument

Mo. Rev. Stat. § 70.429 requires Bi-State to comply with the United States Department of Transportation's safety regulations. Those safety regulations require Bi-State to satisfy all judgments of $5,000,000 or less for personal injuries caused by the negligent operation of its buses with a seating capacity of 16 passengers or more. *See* 49 C.F.R. § 387.1, *et seq*. This requirement conflicts with the liability limitation provided in Mo. Rev. Stat. § 537.610, which purports to cap Bi-State's liability at $420,606 for all actionable claims. Because the later-enacted requirements of § 70.429, incorporating 49 C.F.R. § 387.1, *et seq.*, are specific to Bi-State and its negligent operation of buses with the requisite seating capacity, those requirements control this case rather than the earlier-enacted general liability limitations of § 537.610:

> Where two statutory provisions covering the same subject matter … are in conflict when examined together [and cannot be harmonized], a chronologically later statute, which functions in a particular way will prevail over an earlier statute of a more general nature, and the latter statute will be regarded as an exception to or qualification of the earlier general statute.

S. Metro Fire Prot. Dist., 278 S.W.3d at 666.

Accordingly, the trial court erred in reducing the original judgment amount of $1,878,000 to $420,606 based on the limitations stated in § 537.610. The amended

judgment should be reversed and a new judgment entered in the original amount of $1,878,000.

A. Missouri law expressly requires Bi-State to comply with the United States Department of Transportation's safety regulations.

Sections 70.370 through 70.429 of the Missouri Revised Statues are devoted to the laws governing Bi-State. These include the laws that authorized Bi-State's creation pursuant to a multi-state compact between Missouri and Illinois (Mo. Rev. Stat. § 70.370); laws governing the scope and extent of Bi-State's powers (*see, e.g.*, Mo. Rev. Stat. § 70.373); and laws dictating Bi-State's organization and management (*see, e.g.*, Mo. Rev. Stat. § 70.380).

As part of this statutory scheme, the Legislature mandated that Bi-State comply with all the United States Department of Transportation's safety regulations throughout its operations:

> All interstate and intrastate United States Department of Transportation safety rules and regulations ***shall*** apply to all operations of the bi-state development transit system. On May 26, 1993, the agency shall not be eligible to receive state funds unless it adopts a policy to comply with this requirement.

Mo. Rev. Stat. § 70.429 (emphasis added).

Accordingly, as found by the Court of Appeals, "[t]he Missouri Legislature adopted the DOT's federal safety regulations for Bi-State as an express condition of Bi-State's acceptance of state funding in Section 70.429." Slip op. at 6; App. A21. And, as also noted by the Court of Appeals, "[t]he record presents no factual dispute that Bi-State is a bi-state development transit system that receives state funding." *Id.* at 5; App. A20.

Absent this statute, Bi-State would not have been subject to the United States Department of Transportation's safety regulations because multi-state compact entities like Bi-State are expressly excluded from their coverage. *See* 49 C.F.R. § 390.3(f)(2) (stating that the safety regulations do not apply to "an agency established under a compact between States that has been approved by the Congress of the United States"). Section 70.429, therefore, represents a conscious choice by the Missouri Legislature to remove Bi-State from that exclusion and impose on it the obligations of the federal safety regulations.

Notably, Bi-State has never denied that it is required by Missouri law to comply with the Department of Transportation's safety regulations. L.F. 41. And, as discussed below, those regulations obligate Bi-State to satisfy all judgments of $5,000,000 or less for personal injuries caused by its negligent operation of buses with a seating capacity of 16 people or more. 49 C.F.R. § 387.1, *et seq.*; 49 C.F.R. § 390.3(c).

B. The Federal Motor Carrier Safety Regulations require Bi-State to satisfy judgments of $5,000,000 or less for personal injuries caused by the negligent operation of its buses with a seating capacity of 16 people or more.

The Department of Transportation's safety regulations are promulgated by the Federal Motor Carrier Safety Administration and codified in Title 49, Subtitle B, Chapter III, Subchapter B of the *Code of Federal Regulations*, titled "Federal Motor Carrier Safety Regulations." *See* 49 C.F.R. § 350.101. While Part 390 of Subchapter B is also titled "Federal Motor Carrier Safety Regulations," Part 390 expressly incorporates the entirety of Subchapter B, specifically including Part 387 at issue in this appeal. *See* 49 C.F.R. § 390.3(a) (incorporating all of Subchapter B); 49 C.F.R. § 390.3(c) (specifically incorporating Part 387, at issue in this appeal).

Accordingly, the entirety of Title 49, Subtitle B, Chapter III, Subchapter B of the Code of Federal Regulations constitutes the "United States Department of Transportation safety rules and regulations" with which the Missouri Legislature required Bi-State to comply when it passed § 70.429 of the Missouri Revised Statutes. § 70.429, RSMo.; 49 C.F.R. §§ 350.101, 390.3(a) and (b).[4]

Part 387 of the Federal Motor Carrier Safety Regulations requires motor carriers to maintain certain minimum levels of financial responsibility for their public liability. 49 C.F.R. § 387.1, *et seq*. The purpose of the regulations was "to create additional incentives to carriers to operate their vehicles in a safe manner and to assure that they maintain adequate levels of financial responsibility." 49 C.F.R. § 387.25.

Subpart B of Part 387 applies to and "prescribes the minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate or foreign commerce." 49 C.F.R. § 387.24. For purposes of Subpart B, the term "motor carrier" is defined as a "for-hire motor carrier," and the term "for-hire" includes "the business of transporting, for compensation, passengers and their property." 49 C.F.R. § 387.29. As an entity that operates buses for hire to transport people in, around, and between Missouri and Illinois, Bi-State is a "for-hire motor carrier[] transporting passengers in interstate or foreign commerce." Accordingly, by virtue of § 70.429, Subpart B of Part 387 of the Federal Motor Carrier Regulations applies to and

[4] Title 49, Subtitle B, Chapter III, Subchapter B of the Code of Federal Regulations – 49 C.F.R. §§ 350.101, *et seq*. – is hereinafter referred to as the "Federal Motor Carrier Safety Regulations."

prescribes the minimum levels of financial responsibility that Bi-State is required to maintain.

Part 387, Subpart B, states in pertinent part that "[n]o motor carrier shall operate a motor vehicle transporting passengers until the motor carrier has obtained and has in effect the minimum levels of financial responsibility set forth in § 387.33 of this subpart." 49 C.F.R. § 387.31. It further states that "[a]ny vehicle with a seating capacity of 16 passengers or more, including the driver" must have minimum levels of financial responsibility of $5,000,000. 49 C.F.R. § 387.33.

For purposes of this requirement, "financial responsibility" means the "financial reserves (*e.g.* insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability." 49 C.F.R. § 387.29. "Public liability," in turn, "means liability for bodily injury or property damage." *Id.*

Bi-State buses, including the bus at issue in this action, have a seating capacity of 16 passengers or more. Tr. 180:10-13; L.F. 34:3. Thus, pursuant to the federal safety regulations adopted by § 70.429, Bi-State must maintain at least $5,000,000 in insurance policies, surety bonds, or other reserves sufficient to satisfy public liability, including bodily injury, arising out of the negligent operation of its buses.

The Federal Motor Carrier Safety Regulations do not just require Bi-State to ***have*** $5,000,000 in insurance policies, surety bonds, and other security. Subpart C of Part 387, which governs the requirements for such policies, bonds, and other security, requires Bi-State to ***pay*** up to $5,000,000 to satisfy any judgment based on the negligent operation of its buses:

> No for-hire motor carrier…shall engage in interstate or foreign commerce, and no certificate shall be issued to such carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA surety bonds, certificate of insurance, proof of qualifications as self-insurer, or other securities or agreements, in the amount prescribed in § 387.303, ***conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of motor vehicles in transportation…***

49 C.F.R. § 387.301(a) (emphasis added).[5]

This emphasis on the payment of a judgment is consistent with the purpose of 49 U.S.C. § 31138(b), the act under which these regulations were promulgated. The driving force behind the passage of this act was the concern that motor carriers would not be able to pay the catastrophic damages caused by their large vehicles. The act, therefore, was passed "to ensure that members of the public injured by the negligence of common carriers [were] able to obtain collectible judgments." *Insurance Corp. of New York v. Monroe Bus Corp.*, 491 F.Supp.2d 430, 439 (S.D.N.Y. 2007).

Bi-State admitted in the trial court that it does maintain the minimum financial responsibility limits required by the Federal Motor Carrier Safety Regulations in the form of a "self-insured retention of $5,000,000.00 per occurrence which is applicable only to third party liability claims against which this defendant is not sovereignly immune." L.F. 41:5-6, 45:2-3. Bi-State, however, is not in compliance with § 70.429, the Federal Motor Carrier Safety Regulations that statute adopts, nor the act under which the regulations were

[5] Section 387.303, referenced in this provision, recites and incorporates the same minimum financial responsibility requirements of $5,000,000 for motor carriers of passengers with seating for 16 or more passengers. 49 C.F.R. § 387.303(b)(1)(ii).

promulgated, unless and until it uses that self-insured retention to ***pay*** up to $5,000,000 for a judgment arising out of the negligent operation of its buses.

In sum, the Missouri Legislature expressly and purposely required Bi-State to comply with the Federal Motor Carrier Safety Regulations, and those regulations require Bi-State to satisfy any judgment up to $5,000,000 arising out of Bi-State's negligent operation of its larger buses. Mo. Rev. Stat. § 70.429; 49 C.F.R. §§ 387.31, 387.33, 387.301(a). Ms. Moore obtained a judgment against Bi-State in the amount of $1,878,000. L.F. 14. Ms. Moore's judgment arose out of her claim against Bi-State for personal injuries caused by the negligent operation of one of its buses with a seating capacity of 16 passengers or more. L.F. 2, 34:3; Tr. 180:10-13. Because the $1,878,000 judgment was less than the $5,000,000 minimum limits of Bi-State's financial responsibility under the Federal Motor Carrier Safety Regulations, Bi-State should be required to pay the full amount of that judgment.

C. The later-enacted § 70.429, RSMo., which is specific to Bi-State and specific to claims based on its negligent operation of buses, controls over the earlier-enacted general liability limitations of § 537.610, RSMo.

Instead of requiring Bi-State to satisfy the jury's $1,878,000 judgment in full in accordance with § 70.429, the trial court reduced the judgment amount to $420,606, pursuant to § 537.610.2. The trial court erred when it determined that § 537.610.2 controlled over the requirements of § 70.429.

Section 537.610.2 applies to public entities normally protected from liability by sovereign immunity. It places a monetary limit on such an entity's liability in instances where sovereign immunity is waived. As an initial matter, there is no dispute in this action

that Bi-State is a "public entity" normally entitled to the protections of sovereign immunity pursuant to § 537.600. *See State ex rel. Trimble v. Ryan*, 745 S.W.2d 672, 675 (Mo. banc 1988) (finding that Bi-State is a public entity protected by sovereign immunity). There is also no dispute that Bi-State's sovereign immunity was waived for purposes of this action by operation of the same statute:

> [T]he immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances:
>
> (1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment.

Mo. Rev. Stat. § 537.600.1.

Ms. Moore pleaded and proved that a Bi-State employee negligently drove a Bi-State bus into the side of her parked school bus, causing her significant personal injuries. L.F. 2, Tr. 195:5-196:9. Thus, this action is within the scope of the waiver of sovereign immunity established by § 537.600.1, RSMo.

Accordingly, contrary to the way Bi-State framed this issue in the trial court, in the Court of Appeals, and in its application for transfer to this Court, the sole dispute between the parties is whether § 537.610, which limits a public entity's liability for claims where sovereign immunity has been waived, should control over the requirements of § 70.429 and 49 C.F.R. §§ 387.1, *et seq.*, discussed above.

The Court of Appeals resolved that issue correctly. Section 537.610 cannot control because (1) the liability limitation of that statute and the liability requirements of § 70.429

conflict and cannot be harmonized, and (2) under the canons of statutory construction, the later-enacted and significantly more specific § 70.429 prevails over the earlier and more general § 537.610. *See S. Metro Fire Prot. Dist.*, 278 S.W.3d at 666. As also discussed below, the Legislature's intent in adopting the greater financial responsibility requirements of § 70.429 is sufficient to overcome the sovereign immunity-related liability caps of § 537.610.2 and require that § 70.429 be applied to this action.

1. There is an irreconcilable conflict between § 70.429 and § 537.610.

Before resolving a conflict between two statutes, it must first be determined whether a conflict exists. *Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27, 33 (Mo. banc 2015) (explaining that "identifying conflict between two statutes [is] a precondition to the application of the [conflict-resolving] principles of statutory construction") (citing *State ex rel. City of Jennings v. Riley*, 236 S.W.3d 630, 631 (Mo. banc 2007)). The conflict between the requirements of § 70.429 and the limitations of § 537.610.2 is obvious and irreconcilable.

Section 70.429 requires Bi-State to comply with the governing federal safety regulation by paying up to $5,000,000 for personal injuries caused by the negligent operation of its buses with a seating capacity of 16 passengers or more. Section 537.610, on the other hand, places a substantially lower cap on the liability of a public entity like Bi-State for all claims where sovereign immunity is waived:

> The liability of the state and its public entities on claims within the scope of sections 537.600 to 537.650 shall not exceed two million dollars for all claims arising out of a single accident or occurrence and ***shall not exceed three hundred thousand dollars for any one person in a single accident or occurrence***,

> except for those claims governed by the provisions of the Missouri workers' compensation law, chapter 287.

Mo. Rev. Stat. § 537.610.2 (emphasis added).[6]

The Court of Appeals recognized the obvious conflict between a statute that requires Bi-State to pay up to a minimum of $5,000,000 to satisfy specified personal injury claims and a statute that would cap Bi-State's financial responsibility with respect to those claims at $300,000:

> Sections 70.429 and 537.610 are in obvious conflict. Absent the conflicting directive of Section 70.429, Section 537.600 applies to Bi-State as a sovereignly immune public entity and limits Bi-State's financial responsibility for personal injury awards to the statutory caps set forth in Section 537.610. Section 70.429, on the other hand, expressly requires Bi-State to accept financial responsibility, under the facts of this case, up to five million dollars, substantially in excess of the statutory caps.

Slip op. 7-8; App. A22-23 (internal citation omitted).

The two statutory requirements cannot be harmonized. If, in personal injury claims arising out of Bi-State's negligent operation of its larger buses, its liability remains capped at $300,000, then Bi-State can never comply with the requirement of § 70.429 that it pay up to $5,000,000 for those same injuries. The Court of Appeals correctly concluded that "[b]ecause Bi-State cannot comply with both statutes concurrently, this conflict must be resolved under canons of statutory interpretation."

[6] Pursuant to § 537.610.5, the cap amount of $300,000 per person in a single occurrence increases or decreases each year based on an inflation index. As of the date of Ms. Moore's judgment, the limitation for a single person in a single occurrence, as adjusted for inflation, was $420,606. L.F. 20:2.

2. Under the canons of statutory interpretation, § 70.429 controls.

This Court has made it clear that "where two statutes conflict, 'a chronologically later statute, which functions in a particular way will prevail over an earlier statute of a more general nature, and the latter statute will be regarded as an exception to or qualification of the earlier general statute.'" *S. Metro. Fire Prot. Dist.*, 278 S.W.3d at 666. The Court of Appeals took note of that opinion and applied the canon, recognizing that § 70.429 is both later enacted and significantly more specific than § 537.610.2.

As discussed by the Court of Appeals, § 70.429 was enacted not only after § 537.610 but also after Bi-State's status as a public entity possessing sovereign immunity had been firmly established by this Court. Slip. op. at 3-5; App. A18-20 (citing *Trimble*, 745 S.W.2d at 674). The Court noted that *Trimble* recognized Bi-State's immunity in 1988 and that the Legislature enacted § 70.429—which "applies specifically to Bi-State"—five years later in 1993. *Id.* at 4-5; App. A19-20.

Section 70.429 is also exceedingly narrow in its focus, targeting a single entity—Bi-State—and imposing a singular mandate: "All interstate and intrastate United States Department of Transportation safety rules and regulations shall apply to all operations of the bi-state development transit system." By virtue of the federal safety regulations it adopted, § 70.429 targeted a specific and narrow type of claim: personal injury actions arising from the negligent operation of Bi-State buses with a seating capacity of 16 or more passengers.

Placing the scope of § 70.429 in context: If this were a personal injury action against, for example, the University of Missouri for a collision caused by one of its buses, then §

70.429 would not apply. If this were a personal injury action arising out of Bi-State's premises liability, then § 70.429 would not apply. In fact, if this were a personal injury action arising out of the negligent operation of any Bi-State vehicle other than its buses, such as a company car or its Metrolink train, then § 70.429 would not apply. Literally any type of claim against any other entity or any claim against Bi-State other than a claim for personal injuries arising out of the negligent operation of its buses with a seating capacity of 16 passengers or more would fall outside the narrow scope of § 70.429.

Section 537.610.2, on the other hand, is very broad in its scope and applicability. The statute applies to every type of public entity, including cities and other political subdivisions of the state (*see, e.g., Bennartz v. City of Columbia*, 300 S.W.3d 251 (Mo. App. 2009)), fire departments (*se,e e.g., Farm Bureau Town & Country Ins. Co. of Missouri v. American Alternative Ins. Corp.*, 347 S.W.3d 525 (Mo. App. 2011)), hospitals (*see, e.g., Casey v. Chung*, 989 S.W.2d 592 (Mo. App. 1998)), and colleges (*Hendricks v. Curators of University of Missouri*, 308 S.W.3d 740 (Mo. App. 2010)). It also covers every type of claim for which sovereign immunity is waived, including motor vehicle collisions involving all types of motor vehicles (§ 537.600.1), premises liability cases (§ 537.600.2), and any other type of claim for which a public entity has purchased insurance coverage (§ 537.610.1).

Accordingly, per the canons of statutory interpretation, § 70.429 must be construed as an exception to the previously enacted and more general § 537.610.2, and it must supersede § 537.610.2 under the facts of this case.

3. The Legislature intended § 70.429 as an exception to § 537.610.2.

The Court of Appeals acknowledged that "provisions waiving sovereign immunity are to be strictly construed." Slip op. at 9; App. A25 (internal citation omitted). Relying on *Bachtel v. Miller County Nursing Home Dist.*, 110 S.W.3d 799 (Mo. banc 2003), the Court of Appeals concluded that this maxim did not preclude § 70.429 from being treated as a limited exception to § 537.610.2. The Court of Appeals' reliance on *Bachtel* is apt.

In *Bachtel*, two former employees of a county-run nursing home sued the facility for retaliatory termination under the Omnibus Nursing Home Act. *Bachtel*, 110 S.W.3d at 800. The nursing home argued that, because it was a county-run nursing home, sovereign immunity protected it from liability. *Id*. at 801. The trial court granted dismissal on those grounds. *Id*.

On appeal, this Court disagreed and reversed. *Id*. at 805. The Court first noted that the Act represented an important exercise of the police power of the state, intended to protect the health, safety and welfare of an otherwise vulnerable segment of the state's citizens. *Id*. at 801. The Court then held that the Omnibus Nursing Home Act created an exception to the county-run nursing home's sovereign immunity. *Id*. at 805. In so holding, the Court acknowledged that the intent of the legislature to waive sovereign immunity must be express rather than implied but rejected the county's argument that the law required "magic words." *Id*. at 803. Instead, the Court found that the intent of the legislature could be "expressed through other words." *Id*.

The Court noted that the Act expressly authorized the formation of the county-owned nursing home as a "nursing home district" and that the same statutory section

permitted a private right of action against "nursing home districts." *Id*. at 805. Having expressed an intent to allow all "nursing home districts" to be sued and having included county-owned nursing homes as "nursing home districts," the Court found that it would be illogical and defeat the stated purpose of the statute to hold that the Missouri Legislature had not expressed an intent to waive the county's sovereign immunity for purposes of such suits. *Id*.

Both the distinctions and the similarities between *Bachtel* and this action dictate the same result. The most obvious distinction is that the waiver of Bi-State's sovereign immunity for purposes of Ms. Moore's claim is not at issue. Section 537.600.1 expressly waives a public entity's sovereign immunity for claims like the one at bar where the injuries at issue result from "the negligent acts or omissions by a public employee arising out of the operation of motor vehicles or motorized vehicles within the course of their employment." Thus, the question here is not whether the Legislature intended to waive Bi-State's sovereign immunity for purposes of the present claim, but whether it meant to create an exception to the liability caps stated in § 537.610.2.

As in *Bachtel*, the intent to create such an exception is expressed through the adoption of specific, minimum financial responsibility requirements applicable to Bi-State for personal injuries arising out of the negligent operation of its larger buses. As recognized by the Court of Appeals, and like *Bachtel*, the purpose of the exception statute and the financial responsibility requirements it imposed was to protect the safety of the citizens of this state from the catastrophic harms that can be caused by large buses. Slip op. at 5; App. A20 (noting that "**[t]he purpose of these regulations is to create additional incentives**

to carriers to operate their vehicles in a safe manner…") (emphasis in original) (internal quotations and citations omitted)).

Also, as in *Bachtel*, the laws permitting Bi-State's existence are the same laws that require this exception. In *Bachtel*, it was the Omnibus Nursing Home Act that both allowed the county to form the "nursing home district" and allowed the "nursing home district" to be sued. Here, it is the same statutory scheme authorizing Bi-State's existence and operation that also requires Bi-State to comply with these greater financial responsibility requirements. Moreover, the very statute that requires Bi-State to comply with these greater financial responsibility requirements also conditions Bi-State's ongoing existence as a "public entity" entitled to state funding upon its compliance with the requirements. *See* § 70.429 (stating that Bi-State "shall not be eligible to receive state funds unless it adopts a policy to comply with this requirement").

Finally, as in *Bachtel*, determining that § 70.429 does not create an exception to § 537.610.2 would destroy the very purpose of the newer statute. Limiting Bi-State's liability to the general cap for waived sovereign immunity cases rather than holding it liable in the amount required by the federal regulations would negate a safety measure that the Legislature plainly adopted, diminish Bi-State's incentive to operate its buses safely, and inevitably leave Missouri citizens unable to recover from catastrophic damages caused when those large vehicles are operated negligently.

"Appellate courts presume the legislature is aware of appellate interpretations of existing statutes and that by 'enacting a new one on the same subject, it is ordinarily [the] intent of the legislature to effect some change in [the] existing law.' This Court assumes

that the legislature does not intend to perform a useless act." *E & B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 317 (Mo. banc 2011) (quoting *Kilbane v. Dir. of Revenue*, 544 S.W.2d 9, 11 (Mo. banc 1976)).

Accordingly, the Missouri Legislature's enactment of Section 70.429 reflects its intent to create an exception to Section 537.610.2's limitation on damages.

4. Section 70.429 requires reversal of the trial court's amended judgment.

The Court of Appeals recognized that the greater financial responsibility requirements of Section 70.429 must control in the circumstances of this action in order to "give effect to the Missouri Legislature's decision to enact Section 70.429," and that the trial court thus erred by reducing Ms. Moore's award based on the liability limitations of Section 537.610:

> Therefore, we must give effect to the Missouri Legislature's decision to enact Section 70.429, a statute specifically requiring Bi-State's compliance with the DOT's safety regulations, including the regulations requiring that Bi-State carry a minimum financial responsibility of five-million dollars for personal injury claims involving its sixteen-passenger Bi-State Call-A-Ride vehicles. Although the canons of statutory construction are not intended to be rigidly applied, the canons in this case lead us to reasonably conclude that the more specific Section 70.429 controls over the more general Section 537.610.
>
> * * *
>
> Accordingly, because we find Section 70.429 governs the amount of damages Moore may be awarded against Bi-State in her personal injury action based upon Bi-State's negligent operation of its Call-A-Ride bus, we find the trial court erred in granting Bi-State's motion for remittitur and reducing Moore's award based on the liability limitations in Section 537.610.

(Op., pgs. 9, 10).

Pursuant to § 70.429, therefore, judgment should have been entered for the original verdict amount of $1,878,000.

D. Neither *Trimble* nor *Brancati* control or change the analysis in this appeal.

The arguments raised by Bi-State in the trial court and the Court of Appeals are untenable. In the Court of Appeals, Bi-State relied heavily on two cases – *State ex rel. Trimble v. Ryan*, 745 S.W.2d 672 (Mo. banc 1988) and *Brancati v. Bi-State Development Agency*, 571 S.W.3d 625 (Mo. App. 2018) – for the proposition that Ms. Moore was attempting to "avoid over 30 years of binding Missouri precedent." Bi-State's assertion was and is incorrect. Neither *Trimble* nor *Brancati* constitute "binding precedent" because neither *Trimble* nor *Brancati* addressed or even mentioned the question presented in this appeal.

"'Judicial decisions must be construed with reference to the facts and issues of the particular case…and the authority of the decision as precedent is limited to those points of law which are raised by the record, considered by the court, and necessary to the decision.'" *Baker v. Century Financial Group, Inc.*, 554 S.W.3d 426, 436 (Mo. App. 2018) (quoting *State ex rel. Tivol Plaza v. Mo. Comm'n on Human Rights*, 527 S.W.3d 837, 845 (Mo. banc 2017)). Similarly, "[t]he maxim of stare decisis applies only to decisions on points arising and decided in causes and does not extend to mere implications from issues actually decided." *State v. Honeycutt*, 421 S.W.3d 410, 422 (Mo. banc 2013) (internal quotations and citations omitted).

In *Trimble*, this Court found that the liability caps reflected in § 537.610.2 were applicable to Bi-State. *Trimble*, 745 S.W.2d at 673-75. But the only issue raised by the parties and the only issue decided by the Court was whether Bi-State was a "public entity" possessed of sovereign immunity pursuant to § 537.600. Upon deciding that Bi-State was a "public entity," the applicability of the liability caps was presumed without further analysis. *Id*.

Bi-State's status as a "public entity" is not at issue in this appeal. The only question presented here is whether the liability caps reflected in § 537.610.2 apply to personal injury claims arising out of Bi-State's negligent operation of its large buses or are superseded by the more specific requirements of § 70.429 and the federal safety regulations it adopted. This question was not considered in *Trimble*. *Id*. In fact, *Trimble* could not have addressed the question because it was decided five years prior to the enactment of § 70.429.

Bi-State's reliance on *Brancati* suffers from the same flaw. In *Brancati*, Bi-State moved the trial court to reduce the judgments against both Bi-State and its employee-driver to the statutory cap pursuant to § 537.610.2. The plaintiff did not oppose the reduction as to Bi-State, arguing only that the statute did not apply to Bi-State's employee-driver. *Brancati*, 571 S.W.3d at 636-37. The trial court agreed, reducing the judgment as to Bi-State but not the employee driver. *Id*. Bi-State appealed, arguing that § 537.610.2 should apply to its employee-drivers. *Id*. The Court of Appeals disagreed, citing the plain language of the statute and *Trimble* to conclude that sovereign immunity protections did not extend to Bi-State's employees. *Id*.

Importantly, while the Court of Appeals mentioned Bi-State's sovereign immunity, the questions of whether Bi-State was entitled to such immunity and whether the liability caps applied to Bi-State were not addressed because the plaintiff did not challenge the reduction of the judgment against Bi-State. *Id*. More importantly, neither party raised and the Court of Appeals never addressed the question presented in this appeal: whether the liability caps reflected in § 537.610.2 apply to personal injury claims arising out of Bi-State's negligent operation of large buses or are superseded by the more specific and later enacted requirements of § 70.429.

Accordingly, *Trimble* and *Brancati* are not binding precedent. *Baker*, 554 S.W.3d at 436.

E. The trial court erred in granting the motion for remittitur and reducing the judgment amount from $1,878,000 to $420,606 in its amended judgment.

Based on the foregoing, the trial court erred when it determined that § 537.610 required it to reduce the jury's $1,878,000 verdict in favor of Ms. Moore to $420,606. The trial court's ruling was based in large part on two determinations that were inconsistent with the law.

First, the court noted that the definitions in 49 C.F.R. § 355.5 identified Parts 390 through 397 of the regulations as the "Federal Motor Carrier Safety Regulations" and further noted that Part 390 is titled "Federal Motor Carrier Safety Regulations; General." App. A7; L.F. 48:3. Based on this, the trial court determined that Part 387, addressing the limits of minimum financial responsibility, was not included in the Federal Motor Carrier

Safety Regulations that Bi-State was required by Missouri law to follow. App. A7-8; L.F. 48:3-4.

As an initial matter, and as discussed above, the entirety of Title 49 Subtitle B, Chapter III, Subchapter B of the Code of Federal Regulations, which specifically includes Part 387 at issue in this action, is titled "Federal Motor Carrier Safety Regulations." *See* 49 C.F.R. § 350.101(Title Page). However, even if the trial court were correct and, per 49 C.F.R. § 355.5, only Parts 390 through 397 constitute the "Federal Motor Carrier Safety Regulations," Part 390 of Subchapter B expressly incorporates the entirety of Subchapter B, specifically including Part 387, and makes it a part of the rules that Part 390 requires motor carriers to follow:

> This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

49 C.F.R. § 390.1.

> (a) The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.

49 C.F.R. § 390.3(a).

> (c) The rules in part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in §§ 387.3 or 387.27 of this chapter.

49 C.F.R. §§ 390.3(c).

Whether by title or by incorporation, the minimum financial responsibility requirements of 49 C.F.R. § 387.1, *et seq.*, are part of the Federal Motor Carrier Safety

Regulations that the Missouri Legislature made applicable to Bi-State by enacting § 70.429.

Second, the trial court doubted that "an administrative regulation adopted by a federal agency can abrogate a limit on a State's waiver of sovereign immunity absent the State's express consent to such a waiver." App. A8; L.F. 48:4. While the trial court may have been focused on Ms. Moore's alternative argument relating to preemption (which she chose not to pursue on appeal), this statement does not acknowledge the express language of § 70.429. It is not the federal government or a federal agency that requires Bi-State to abide by the Federal Motor Carrier Safety Regulations, including the minimum financial responsibility requirements contained therein. The Missouri Legislature made that determination and created that exception to Bi-State's sovereign immunity protections. Accordingly, an analysis of whether a federal agency has such power is unnecessary.

Ultimately, the trial court's determination that the maximum judgment that may be entered against Bi-State is $420,606 and its subsequent entry of an amended judgment for that amount was contrary to the law.

CONCLUSION

The judgment of the Circuit Court should be reversed for the reasons set forth in this brief and the opinion of the Court of Appeals. The case should be remanded to the Circuit Court for the entry of judgment in the amount of $1,878,000, consistent with the jury's verdict.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Supreme Court Rule 84.06(c), that this Substitute Brief of Appellant Mary J. Moore complies with Rule 55.03, and with the limitations contained in Rule 84.06(b) and Local Rule 360. I further certify that this brief contains 8,271 words, excluding the cover, the Table of Contents, the Table of Authorities, this certificate, and the signature block, as determined by the Microsoft Word 2010 word-counting system.

/s/ Michael Gross

CERTIFICATE OF SERVICE

I hereby certify that, on January 8, 2020, the foregoing Substitute Brief of Appellant Mary J. Moore was filed electronically with the Clerk of the Missouri Supreme Court to be served by operation of the Court's electronic filing system pursuant to Missouri Supreme Court Rule 103.08 on Bharat Varadachari and Katherine Jacobi of Hepler Broom LLC and Donald L. O'Keefe, Jr., James D. Ribaudo, and Timothy M. McAleenan, Jr. of Gausnell, O'Keefe & Thomas, LLC, as counsel of record for Respondent Bi-State Development Agency d/b/a Metro.

/s/ Michael Gross