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STATE OF MINNESOTA

IN COURT OF APPEALS

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Alice Staab,

Respondent,

vs.

Diocese of St. Cloud,

Appellant.

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**APPELLANT'S BRIEF AND ADDENDUM**

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**QUINLIVAN & HUGHES, P.A.**

Dyan J. Ebert (#0237966)  
Laura A. Moehrle (#0348557)  
P.O. Box 1008  
400 South First Street, Suite 600  
St. Cloud, MN 56302-1008  
Telephone: (320) 251-1414

Attorneys for Appellant Diocese of St.  
Cloud

**KEVIN S. CARPENTER, P.A.**

Kevin S. Carpenter (# 015258)  
2919 Veterans Drive  
St. Cloud, MN 56303  
Telephone: (320) 251-3434

Attorney for Respondent Alice Staab

**PEMBERTON, SORLIE, RUFER &  
KERSHNER, P.L.L.P.**

H. Morrison Kershner (#55426)  
PO Box 866  
Fergus Falls, MN 56538-0866  
Telephone (800) 862-3651

Attorney for Respondent Alice Staab

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## LEGAL ISSUES

- I. Whether the Diocese of St. Cloud, which was found to be 50% at fault for Alice Staab's damages, is nevertheless responsible for 100% of Alice Staab's damages pursuant to Minnesota Statute § 604.02 (2003)?

The trial court held: In the affirmative.

Apposite authority:

Minn. Stat. § 604.02 (2003)

## STATEMENT OF THE CASE

This premises liability action was submitted to a jury trial before the Honorable John H. Scherer of the Stearns County District Court. Respondent Alice Staab was injured after her husband, Richard Staab (“Mr. Staab”), pushed her wheelchair off a step on premises of the Diocese of St. Cloud. Respondent sued the Diocese of St. Cloud (“the Diocese”);<sup>1</sup> she did not sue her husband. The Diocese did not bring a third party claim against Mr. Staab. At trial, both the Diocese and Mr. Staab were included on the jury verdict form. The jury found 50% fault on the part of the Diocese and 50% fault on the part of Mr. Staab.

The Honorable John H. Scherer issued Findings of Fact, Conclusions of Law and an Order requiring the Diocese Parish to pay 100% of the jury’s verdict, despite the jury’s finding of only 50% liability against the Diocese. The Diocese brought a motion to amend the Findings of Fact, Conclusions of Law and Order pursuant to Minnesota Statute § 604.02. The District Court denied the Diocese’s motion. The Diocese appeals the District Court’s Order requiring that the Diocese pay 100% of the jury’s verdict.

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<sup>1</sup> The Summons and Complaint named Holy Cross Parish as the Defendant. At trial, the parties stipulated to a change of the named Defendant to the Diocese of St. Cloud.

## STATEMENT OF FACTS

On April 9, 2005, Respondent Alice Staab was injured when Mr. Staab, pushed her wheelchair off a step, causing Respondent to fall out of her wheelchair. Respondent sued the Diocese alleging that the step constituted a dangerous condition on the property and that this condition caused Respondent's injuries. (AA-003 — 004) Respondent did not sue Mr. Staab and the Diocese did not bring a third-party action against Mr. Staab. Id. However, Mr. Staab was included on the verdict form and the jury was asked to consider Mr. Staab's negligence in completing the verdict form. (Add.-01 — 03)

The jury assigned 50% liability to the Diocese and 50% liability to Mr. Staab. Id. The court entered judgment against the Diocese, ordering that the Diocese pay 100% of Respondent's damages. (Add.-04) The court also issued Findings of Fact, Conclusions of Law and an Order requiring that the Diocese pay 100% of Respondent's damages. (Add.-05 — 07) The Diocese sought to amend the Court's Findings of Fact, Conclusions of Law and Order in light of Minnesota Statute § 604.02. (AA-011 — 033) The Court denied the Diocese's motion. (Add.-11 — 16) The Diocese now appeals the District Court's Order requiring it to pay 100% of Respondent's damages.

## STANDARD OF REVIEW

Statutory construction is a question of law, which the appellate court reviews de novo. In re Kleven, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007). An appellate court is not bound by, and need not give deference to, the district court's decision on a question of law. Bondy v. Allen, 635 N.W.2d 244, 249 (Minn. Ct. App. 2001) (citing Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984)).

## ARGUMENT

In 2003, the Minnesota Legislature chose to drastically modify Minnesota's joint and several liability law. Prior to 2003, any person could be held liable for 100% of a jury's verdict unless certain specified conditions were met. Under the current law, a person is only responsible for damages proportionate to their own percentage of fault unless that person's apportionment of fault is 51% or greater. If a person's fault is 51% or greater, then and only then is that person jointly and severally liable for 100% of the jury's verdict. If a person is allocated fault of 50% or less, there is no joint liability for the entire award and a person is only severally liable for damages in proportion to the allocation of fault. Minn. Stat. § 604.02 subd. 1.

This appeal presents an issue of first impression. To Appellant's knowledge, no Minnesota Court has ruled on the issue of whether a person may be held liable for 100% of a jury's verdict where that person's separate liability is 50% or less under the amended language of the statute.

**I. THE PLAIN LANGUAGE OF MINNESOTA STATUTE § 604.02 DIRECTS THE DIOCESE IS RESPONSIBLE TO PAY DAMAGES IN PROPORTION TO ITS PERCENTAGE OF FAULT.**

Interpreting a statute is a question of law. See Hibbing Educ. Ass'n v. Pub. Employment Relations Bd., 369 N.W.2d 572 (Minn. 1985). Rules of statutory construction require courts to harmonize apparently conflicting provisions where possible. Septran, Inc. v. Independent School Dist. No. 271, 555 N.W.2d 915 (Minn. App. 1996). The Court is to presume that statutes are passed with deliberation and with full knowledge of all existing statutes on the same subject. County of Hennepin v. County of Houston, 229 Minn. 418, 39 N.W.2d 858 (Minn. 1949). The goal of statutory interpretation is to effectuate the intent of the legislature. Educ. Minn.-Chisholm v. Indep. Sch. Dist. No. 695, 662 N.W.2d 139, 143 (Minn. 2003).

If the meaning of a statute is unambiguous, the Court should interpret the statute's text according to its plain language. Molloy v. Meier, 679 N.W.2d 711, 723 (Minn. 2004). When a statute, read according to ordinary rules of grammar, is unambiguous, that plain language is followed. Walser Auto Sales, Inc. v. City of Richfield, 635 N.W.2d 391 (Minn. Ct. App., 2001). A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation. Am. Family Ins. Group v. Schroedl, 616 N.W.2d 273, 277 (Minn. 2000). A statute should be interpreted, whenever possible, to give effect to all of its provisions; "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." Id. The Court is to read and construe the statute as a whole and

must interpret each section in light of the surrounding sections to avoid conflicting interpretations. Id.

In 2003, the Minnesota Legislature amended Minnesota's joint and several liability statute § 604.02 subd. 1 as follows:

Subd. 1 [Joint Liability.] When two or more persons are ~~jointly~~ severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that ~~each is the following persons are~~ jointly and severally liable for the whole award:

(1) A person whose fault is greater than 50 percent.

~~Except in cases where: [...] A person whose fault is 15 percent or less is liable for a percentage of the whole award no greater than four times the percentage of fault, including any amount reallocated to that person under subdivision 2.~~

Minn. Stat. 604.02 subd. 1 (2003). The language of the statute is not ambiguous. The intention of the legislature can be discerned by application of the plain language of the statute. The plain language of the statute requires the Court to consider only the separate liability assigned to each person when determining each person's contribution to the entire award. Id. A person must pay in proportion to his fault. Id. Joint liability for the entire award only applies where a person is more than 50% at fault. In the current case, the Diocese is not more than 50% at fault, and therefore is only responsible for 50% of the jury's award.

The phrase "[w]hen two or more persons are severally liable" determines the scope of the joint and several liability statute, and the interpretation of this phrase, and specifically the words "persons," "severally," and "liable," are central to the resolution of the issue on appeal, namely whether the statute applies even

where a jury has allocated 50% fault to a non-party. When these words are given their plain meaning, the joint and several liability statute requires the Diocese only pay that amount of damages that is proportionate to its allocation of fault.

**A. The Plain Language of Minnesota Statute § 604.02 Provides the Statute Applies to All “Persons,” Not “Parties.”**

Minnesota Statute § 604.02 applies to determine a person’s contribution to a plaintiff’s damages, regardless of whether the other at-fault persons were parties to the underlying action. The statute applies “where two or more persons are severally liable.” Minn. Stat. § 604.02 subd 1. Stated otherwise, the statute applies any time the jury is allowed to consider the fault of more than one tortfeasor or where two or more “persons” are found to be liable. Significantly, the statute does not state that it only applies where two or more “parties” are severally liable. If the legislature had intended the statute to apply only to named parties in a lawsuit, the legislature could have expressed this intention by clearly stating that the statute applies where two or more “parties” are severally liable. In fact, in drafting the reallocation provisions of the joint and several liability statute under Minnesota Statute § 604.02 subd. 2, the legislature chose to use the word “parties” instead of “persons.” However, the plain language of the statute controls, and the plain language unambiguously states that the Minnesota Statute § 604.02 subd. 1 applies to “persons.”

In addition to the plain language of the statute, the Minnesota Supreme Court’s analysis and holding in Hosley v. Armstrong Cork Co. is instructive on the

interpretation of the word “persons” as used in Minnesota Statute § 604.02. 383 N.W.2d 289, 293 (Minn. 1986). In Hosley, the Court considered the scope of the word “parties” as used in the reallocation section of Minnesota’s joint and several liability statute, § 604.02 subd. 2. The Court noted that while Minnesota Statute § 604.02 subd. 1 applies to “persons,” § 604.02 subd. 2 applies to “parties.” In reconciling the language of these two subdivisions, the Court held the word “party” in subdivision 2 need not be limited to the restrictive definition of “a party to a lawsuit” but instead could be more broadly defined as “a person whose fault has been submitted to the jury” or in other words “parties to the transaction.” Id. Citing to Lines v. Ryan, the Court determined the broader reading of the term “parties” for purposes of the joint and several liability statute was appropriate. The Court stated:

Under Lines, courts submit to the jury the fault of all “parties to the transaction.” Because a percentage of fault is assigned to such a party, and because the percentage assigned represents the maximum amount chargeable against such a party (the figure can be used defensively by a party in a future suit), Minnesota courts can calculate the reallocation of this assigned fault pursuant to the statute.

Id. (citing Lines v. Ryan, 272 N.W.2d 896, 903 (Minn. 1978)). The Court held that limiting the applicability of the reallocation provision to only “parties to the lawsuit” when the purpose behind such a restrictive definition is not present, would thwart the legislatures creation of a fair method of distributing the risk of uncollectible obligations under the comparative fault scheme. Id. In doing so, the

Court recognized a comment to the Uniform Comparative Fault Act's reallocation provision, which provides:

[The provision] avoids the unfairness both of the common law rule of joint and several liability, which would cast the total risk of uncollectibility upon the solvent defendants, and of a rule abolishing joint and several liability, which would cast the total risk of uncollectibility upon the claimant.

Id. citing Uniform Comparative Fault Act, § 2, cmt. 12.

According to the plain language of the statute, the Diocese's contribution to the jury's verdict must be analyzed according to the requirements of Minnesota Statute § 604.02, regardless of the fact Mr. Staab was not a named party in the underlying action. The statute applies where two or more persons are liable. While the Minnesota Supreme Court's holding in Hosley analyzes the use of the word "parties" as opposed to "persons" in the context of the reallocation provisions of Minnesota Statute § 604.02, the rationale is equally applicable to the interpretation of the use of the word "persons" in subdivision 1 of the statute. In Hosley, the Court held application of the joint and several liability statute exclusively to named parties was inappropriate, and instead determined that for purposes of reallocation, the term "parties" should be read broadly to include all persons whose fault was submitted to the jury. Id. Therefore, in accordance with the holding and analytical framework in Hosley, the term "persons" as used in subdivision 1 should be given its plain meaning, and not artificially narrowed to mean "parties to the lawsuit," particularly where the term "parties" has not been afforded such a narrow construction. Here, both the Diocese and Mr. Staab's

negligence were submitted to the jury and both were found liable. Accordingly, Minnesota Statute § 604.02 applies to determine the Diocese's contribution to the damages award.

**B. The Plain Language of Minnesota Statute § 604.02 Provides the Statute Applies Where Persons are “Severally” Liable, Not “Jointly” Liable.**

In 2003, the legislature amended the introductory sentence of Minnesota Statute § 604.02, which determines the scope of the statute, by changing the phrase “where two or more persons are jointly liable” to “where two or more persons are severally liable.” Minn. Stat. § 604.02 subd. 1. While the Court of Appeals and the Supreme Court have not had the opportunity to address the significance of this change, the plain language is instructive. Blacks Law Dictionary defines several liability as:

Liability that is separate and distinct from another's liability, so that the plaintiff may bring a separate action against one defendant without joining the other liable parties.

This definition ought to be contrasted with the definition of joint liability, which is:

Liability shared by two or more parties.

Blacks Law Dictionary 416-17 (2d Pocket ed. 2002). Under the prior versions of Minnesota Statute § 604.02, two persons must have been jointly liable before the remaining provisions of the statute applied.

Minnesota Statute § 604.02 no longer requires two persons to be jointly liable for the provisions of the statute to apply. Instead, the provisions of the

joint and several liability statute apply where two or more persons are severally, or separately, liable. Here, the Diocese and Mr. Staab are separately liable for Respondent's injuries. Stated simply, the statute applies where more than one person has been found to be responsible for a plaintiff's injuries. Joint liability for 100% of a plaintiff's damages only arises when a person who is severally liable is found to be more than 50% at fault.

The Diocese and Mr. Staab are severally, or separately, liable for Alice Staab's injuries. Because this case involves two persons who are severally liable, the joint and several liability statute applies to determine the Diocese's contribution to Respondent's damages.

**C. The Plain Language of Minnesota Statute § 604.02 Provides the Statute Applies Where Persons are Severally "Liable" for a Plaintiff's Injuries, Not Liable for a Judgment.**

Minnesota Statute § 604.02 provides the provisions of the joint and several liability statute apply where "two or more persons are severally liable." Minn. Stat. § 604.02 subd. 1. Minnesota Courts have repeatedly held that a person becomes "liable" at the time of the alleged negligence. The Minnesota Supreme Court has stated that common liability "is created at the instant the tort is committed. White v. Johnson, 137 N.W.2d 674, 679 (1965); Spitzack v. Schumacher, 241 N.W.2d 641, 643 (Minn. 1976).

In fact, the Minnesota Supreme Court stated:

It has always been the law of this state that parties whose negligence concurs to cause injury are jointly and severally liable although not acting in concert. Mathews v. Mills, 178 N.W.2d 841 (Minn. 1970).

Maday v. Yellow Taxi of Minneapolis, 311 N.W.2d 849, 850 (Minn. 1981).

Minnesota courts have also drawn a distinction between “liability” for the purposes of establishing common fault for an action and “liability” for the purposes of a claim for indemnity or contribution against another tortfeasor. While the Minnesota Supreme Court has held that common liability exists immediately after the acts of the tortfeasors that give rise to a cause of action against them, Employers Mut. Casualty Co. v. Chicago St. P M & O Ry., 50 N.W.2d 689 (Minn. 1951), the Minnesota Supreme Court has also stated “it is joint liability, rather than joint or concurring negligence, which determines the right of contribution.” Spitzack v. Schumacher, 241 N.W.2d 641, 645 n.2 (Minn. 1976).

The Diocese anticipates Respondent may argue the term “liable” should be interpreted to mean “liable for a judgment,” therefore rendering the statute inapplicable where non-parties are involved, because non-parties, despite being subject to an allocation of fault, cannot be held “liable” to pay a plaintiff’s damages pursuant to a judgment. Respondent may argue that, in this case, two or more people are not “liable” because there can be no judgment against a non-party like Mr. Staab. This argument must be rejected because it is contrary to the plain meaning of the word “liable.” Minnesota courts have consistently held

common liability is triggered at the moment negligence concurs to cause injury. Maday v. Yellow Taxi of Minneapolis, 311 N.W.2d 849, 850 (Minn. 1981). In fact, the Minnesota Supreme Court in Maday expressly stated the joint and several liability statute adopted this concept of liability:

It has always been the law of this state that parties whose negligence concurs to cause injury are jointly and severally liable although not acting in concert. [citation omitted]. This common-law rule has been incorporated into our comparative negligence statute.

Id. [emphasis added].

The term “liable” is only interpreted to mean “liable for a judgment” when used in the context of a claim for contribution. Spitzack v. Schumacher, 241 N.W.2d 641, 645 n.2 (Minn. 1976). This is not a claim for contribution. The plain meaning of the word “liable,” in the context of Minnesota Statute § 604.02 subd. 1, means concurring negligence causing injury. Here, the jury determined the negligence of Mr. Staab and the Diocese concurred to cause Respondent’s injuries, and accordingly, both were liable within the meaning of the statute. Accordingly, the joint and several liability statute applies to determine the Diocese’s contribution to Respondent’s damages.

Interpreting the word “liable” to mean “liable for a judgment” would also conflict with the other unambiguous terms within the statute. Appellate courts are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations. In re Kleven, 736 N.W.2d 707, 709 (Minn. Ct. App., 2007). “[W]ell-established rules of statutory construction require the court to harmonize apparently conflicting

provisions where possible.” Septran, Inc. v. Indep. Sch. Dist. No. 271, 555 N.W.2d 915, 919 (Minn. Ct. App.1996).

If the court were to hold the term “liable” in the phrase “where two or more persons are severally liable” means “liable for a judgment” this interpretation would wholly conflict with the plain meaning of the terms “persons” and “severally” as used in the same sentence. As previously discussed at length, the term “persons” is broader than the term “parties,” and is inclusive of party and non-party tortfeasors. While a non-party tortfeasor’s may be included on a verdict form, and a jury may make a determination as to that non-party’s negligence and whether that negligence caused any injury so as to make the non-party “liable” for a plaintiff’s injuries, a non-party cannot be held “liable for a judgment” without violating principles of due process. See Hosley v. Armstrong Cork Co., 383 N.W.2d 289, 293 (Minn. 1986); Lines v. Ryan, 272 N.W.2d 896, 903 (Minn. 1978). Accordingly, if the term “liable” were interpreted to mean “liable for a judgment,” the term “liable” would wholly eviscerate the meaning of the word “persons,” limiting the statute’s application to only those situations where a judgment has been obtained against two “persons,” or more correctly stated, two “parties.”

Likewise, interpreting the term “liable” to mean “liable for damages” would be inconsistent with the legislature’s decision to apply the provisions of the joint and several liability statute where persons are severally, as opposed to jointly liable. If the term “liable” were interpreted to require liability for a judgment, the

legislature's change of the word "jointly" to "severally" within the statute would be meaningless. When the legislature amended the statute to apply where two or more people are severally, rather than jointly liable, the effect was to allow for the application of the statute even where no joint liability for damages was established through the joinder of parties to a lawsuit. However, requiring the effect of a judgment before the statute can apply would negate the effect of this deliberate change in the law. Accordingly, interpreting "liable" to mean "liable for a judgment" is inconsistent with the plain language of the statute, and should be rejected. Accordingly, the term "liable" ought to be interpreted to mean "liable for causing harm" in accordance with the plain language and the legislature's intentions in passing the statute.

**D. The Plain Language of Minnesota Statute § 604.02 Provides the Diocese Must Pay Damages Commensurate with its Allocation of Fault.**

Minnesota Statute § 604.02 provides where two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that a person whose fault is greater than 50% is jointly and severally liable for the entire jury award. Minn. Stat. § 604.02 subd. 1.

The Diocese was one of two "persons" found to be separately at fault, or "severally liable" for Respondent's injuries. Accordingly, the Diocese must contribute to Respondent's damage in proportion to the percentage of fault attributed to it by the jury, namely 50%. The percentage of fault attributed to the

Diocese is not greater than 50%, and therefore the Diocese is not jointly and severally liable for the entire jury award. Minn. Stat. § 604.02 subd. 1. Accordingly, the District Court's Findings of Fact, Conclusions of Law and Order directing the Diocese to pay 100% of Respondent's damages should be reversed.

**II. THE AMENDMENTS TO MINNESOTA STATUTE § 604.02 REFLECT THE LEGISLATURE'S INTENT TO LIMIT A MINIMALLY AT-FAULT DEFENDANT'S CONTRIBUTION TO A PLAINTIFF'S DAMAGES.**

The plain language of Minnesota Statute § 604.02 unambiguously reflects the legislature's intention to amend the joint and several liability statute to limit the circumstances under which a defendant may be held liable for 100% of a jury's award, particularly where a defendant is not primarily at fault for a plaintiff's injuries. However, if the Court believes the plain language of the statute is ambiguous, the Court must look beyond the text to the purpose of the statute, the circumstances under which it was enacted, the mischief the statute was intended to remedy, and the consequences of a particular interpretation. Minn. Stat. § 645.16. Prior versions of a law should be consulted only to solve an ambiguity, not to create one. Welscher v. Myhre, 42 N.W.2d 311, 313 (1950) (if statutory language is clear and unambiguous, no reference should be made to prior enactments).

There is a general presumption that the legislature intends to change the law when they enact an amendment; the presumption of legislative change is only rebutted when the language of an amendatory statute is intended to clarify rather than enlarge the powers of the original statute. State v. McDonnell, 686 N.W.2d

841, 845 (Minn. Ct. App. 2004). The Court generally presumes that amendments to statutory language are intended to change the meaning of the statute. See Northern States Power Co. v. Comm'r of Revenue, 571 N.W.2d 573, 575-76 (Minn.1997) (courts should presume amendments change the meaning of a statute unless it appears the amendment is meant only as clarification). The Court also presumes the legislature acts with full knowledge of existing statutes and judicial interpretations of those statutes. See Wynkoop v. Carpenter, 574 N.W.2d 422, 425 (Minn.1998) (unreversed judicial construction is as much a part of statute as if part of original enactment); Meister v. Western Nat'l Mut. Ins. Co., 479 N.W.2d 372, 378 (Minn.1992) (courts should presume legislature acted with understanding of existing, related legislation).

Every law should be construed, if possible, to give effect to all of its provisions. State v. Larivee, 656 N.W.2d 226, 229 (Minn. 2003). When the words of a law in their application to an existing situation are clear and free from ambiguity, the letter of the law should not be disregarded under the pretext of pursuing the spirit. Id. When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) The occasion and necessity for the law;
- (2) The circumstances under which it was enacted;
- (3) The mischief to be remedied;
- (4) The object to be attained;
- (5) The former law, if any, including other laws upon the same or similar subjects;
- (6) The consequences of a particular interpretation;
- (7) The contemporaneous legislative history; and

(8) Legislative and administrative interpretations of the statute.

Minn. Stat. § 645.16.

The Diocese maintains that the plain language of Minnesota Statute § 604.02 is clear, and therefore there is no need to look any further to determine the proper application of the statute. However, if the Court determines the plain language of the statute is ambiguous, the circumstances under which the amendments took place, the trends with regard to the former law, and the mischief to be remedied with the 2003 amendment likewise support the conclusion that the Diocese is only responsible for 50% of the jury's award.

**A. The 2003 Amendments to Minnesota Statute § 604.02 Are Consistent with Previous Amendments Incrementally Narrowing the Scope of Joint Liability.**

A review of the history of Minnesota Statute § 604.02 is instructive in determining the legislature's intentions surrounding the most recent amendments to the law in 2003. Minnesota Statute § 604.02 was enacted in 1978. At that time, the statute provided a person was not only responsible for the percentage of fault allocated to him, but also provided that all persons were jointly and severally liable for 100% of the jury's verdict. Minn. Stat. § 604.02 subd. 1 (1978).

Under this law, a defendant who was even found to be 1% at fault could be held responsible for 100% of a jury's award. The rule of absolute joint liability for all persons became onerous, particularly on persons who were either adequately insured or otherwise solvent but only minimally at fault. Since 1978, the

Minnesota legislature has incrementally reduced the scope of Minnesota's joint and several liability scheme. In 1986, the legislature limited the contribution of the state or of municipalities to two times their percentage of fault, if their fault was less than 35%. Minn. Stat. § 604.02 (1986). The legislature again amended the law in 1988 by providing a ceiling of "four times the percentage of fault" for those persons whose allocations of fault were less than 15%. Minn. Stat. § 604.02 (1988). Under this rule, if a person was less than 15% at fault, they could not be forced to pay 100% of a jury's award.

In 2003, the Minnesota Legislature took an additional incremental step in narrowing the scope of joint liability. Where the prior law placed a ceiling on the amount of damages a minimally at-fault person would pay, the 2003 Amendment sought to only hold persons liable for 100% of the jury verdict where that person's fault was greater than 50%. Minn. Stat. § 604.02 subd. 1 (2003). Interpreting the 2003 amendments so as to apply regardless of whether a person is a party to the lawsuit is not only consistent with the plain language of the statute, it is also consistent with the demonstrated intention of the legislature to narrow the scope of the joint and several liability statute.

**B. The 2003 Amendments Sought to Remedy the Inherent Unfairness of Prior Versions of Minnesota Statute § 604.02.**

Prior to 2003, the joint and several liability statute lacked fairness. Plaintiffs historically had always received a reduction in damages in proportion to their fault under the comparative fault statute, but defendants were never

allowed to limit their contribution to damages in proportion to their fault. A defendant who was found as minimally as 16% at fault could be forced to pay 100% of a plaintiff's damages. Minn. Stat. § 604.02 sub.1 (2002). While the joint and several liability statute sought to ensure a means for full recovery by an injured party, the inequities of the rule often outweighed the benefits.

This statutory scheme was not only unfair, it also allowed plaintiffs to strategically litigate a claim so as to sue persons with the greatest number of financial resources, without regard to whether that person was likely to be found primarily at fault. A plaintiff, who may have been injured by the negligence of many tortfeasors, could simply choose which tortfeasor to sue - usually one with the "deepest pockets," largest insurance policy, or one that was not related to the plaintiff by blood or marriage. Under the old statutory scheme, as long as the plaintiff was able to allocate some amount of fault on that defendant, the defendant would be forced to 100% of the plaintiff's damages.

Not only was a plaintiff allowed to pick and choose among possible defendants, named defendants were powerless to protect themselves from having to pay a disproportionate share of a plaintiff's damages. The pre-2003 statute required "joint liability" before the statute would apply to govern a person's contribution to a jury's award. This provision created problems for defendants where a plaintiff chose, for any number of strategic purposes, to sue only one of several potentially at-fault tortfeasors. Specifically, while a defendant has a right to bring a third-party claim against any other persons who may have contributed

to a plaintiff's injuries, a defendant is only allowed to bring a claim of contribution or indemnity against another tortfeasor. A claim of contribution and indemnification only obligates the non-party tortfeasor to reimburse the defendant after the defendant has paid damages in excess of his "fair share." Coble v. Lacey, 101 N.W.2d 594 (Minn. 1960). Accordingly, under principles of contribution and indemnity, a defendant must actually pay a plaintiff more than the defendant's fair share before a defendant may collect from another at-fault party. Hoverson v. Hoverson, 12 N.W.2d 501 (Minn. 1943). The original defendant is then forced to undertake collection efforts, often from insolvent parties or friends or family of the plaintiff, while the plaintiff enjoys the benefits of a jury award paid by a defendant who was not primarily responsible in the first instance. Under this scenario, a minimally at fault defendant is still forced to pay 100% of a plaintiff's damages, despite the amount of fault allocated to that defendant.

Furthermore, a third-party defendant is only obligated to a plaintiff if the plaintiff chooses to bring a direct claim against the third party defendant. Therefore, arguably, no joint liability to a plaintiff - as between a defendant and third-party defendant - is created where a plaintiff does not assert a claim against a third-party defendant. Under the pre-2003 law, the question of whether a defendant could avoid joint liability for an entire award by bringing a third-party claim against another tortfeasor was undetermined. In 1990, the Minnesota Supreme Court in Imlay v. City of Lake Crystal evaluated the constitutionality of

the joint and several liability statute. 453 N.W.2d 326 (Minn. 1990). Before addressing the constitutionality of the statute, the Court noted it was an open question whether the joint and several liability statute applied to that particular case because the plaintiffs had only sued the dram shop, and had not sued the intoxicated driver, Miller. Instead, the City, as owners of the dram shop, filed a third-party complaint against Miller. The court stated:

We question the applicability of joint and several liability under these pleadings because the Imlays did not sue Miller; rather his estate was brought in by the city as a third-party defendant. Because the parties have proceeded on the assumption that Minn. Stat. § 604.02 subd. 1 does apply, however, we treat it as such.

Imlay, 453 N.W.2d at 330 Fn. 3 (Minn. 1990). This comment, while dicta, raises the question of whether joint and several liability would apply if a defendant were to join another tortfeasor as an at-fault party. Stated otherwise, if the Supreme Court was correct in their observation, only a plaintiff has the ability to sue parties to trigger the application of joint and several liability. The consequences of this rule also carry-over into settlement efforts because a defendant's decision to enter into a Pierringer settlement with the Plaintiff would destroy any claim for contribution against a third-party defendant. See Bunce v. API, Inc., 696 N.W.2d 892 (Minn. Ct. App. 2005). If one defendant were allowed to settle and become a non-party, the settlement may likewise destroy joint and several liability. See Schneider v. Buckman, 433 N.W.2d 98 (Minn. 1988). If a plaintiff does not sue all the necessary parties or if some parties settle prior to trial, under the pre-2003 law the sued defendants could arguably be responsible for the entire verdict and

be forced to bring a claim of contribution in attempt to recover the amounts paid to the plaintiff above and beyond the defendant's legal obligation.

These "loopholes," which frequently led to unfairness in the assessment of damages against a named defendant, were resolved by the legislature's 2003 amendments to Minnesota Statute § 604.02. First, the revised statute eliminated the circumstance where a minimally at fault defendant would be forced to pay 100% of a jury's verdict by expressly stating a defendant will only pay in proportion to his share of the damages. The only circumstance in which a defendant will pay more than his/her proportionate share of the damages is where a defendant's allocation of fault is greater than 50%. This change in the statutory language reflects a balance between the policy favoring full recovery of a plaintiff and fairness in the assessment of damages against individual persons. Under the amended law, a plaintiff will receive a full recovery from a defendant if the defendant was primarily at fault, but protects minimally at-fault defendants from being targeted as defendants simply due to wealth or adequate insurance coverage.

Second, the legislature's amendments changed the scope of the application of the statute, thus resolving issues related to the applicability of the statute regardless of whether at-fault persons are parties, non-parties, or third parties to the lawsuit. By changing the phrase "where two or more people are jointly liable" to "where two or more people are severally liable," the legislature closed the loophole that allowed a plaintiff to sue only the most solvent person, to the

exclusion of other at-fault parties, leaving a defendant with no remedy other than contribution to avoid the burdens of joint liability. By eliminating the requirement that persons be “jointly liable” before the statute would take effect, the legislature has directed that the only liability that matters in assessing contribution to a jury award is the liability that has been assigned to the person from whom contribution is sought. Each person who is separately, or severally, liable pays in accordance with his or her allocation of fault. If a plaintiff fails to sue an at-fault party, then a plaintiff risks not receiving a full award if the named party is less than 50% at fault. Under the amended law, the problem or “mischief” caused by the requirement of “joint liability” and the involvement of parties, non-parties, and third parties is resolved.

Additionally, the elimination of this loophole is further support for the proposition that the term “liable” should be interpreted as “liable for causing harm” rather than “liable for a judgment.” If the Court were to conclude that “liable” means “liable for a judgment,” the statute would contain an implicit requirement that persons not only be parties to the lawsuit, but also legally obligated to pay a plaintiff damages before the joint and several liability statute would apply. This interpretation would reinstate all of the loopholes that were cured by the legislature’s amendment to the statute, including the problems created when considering the fault of parties in conjunction with non-parties and third-parties.

Based on the history of Minnesota Statute § 604.02, the purposes for the enactment of the statute, and the mischief caused by the previous version of the statute, it is clear that the legislature enacted the 2003 amendments to narrow the scope of joint and several liability. The legislature intended to limit a person's obligation to pay 100% of a plaintiff's damages to only those circumstances where the person was allocated more than 50% of the fault for a plaintiff's injuries. In the instant case, the Diocese was found to be 50% at fault and therefore, pursuant to the statute, is not jointly and severally liable for the entire award.

**III. THE COURT'S 1988 HOLDING IN SCHNEIDER V. BUCKMAN IS INAPPOSITE.**

The District Court's order denying the Diocese's post trial Motion to Amend the Findings of Fact, Conclusions of Law and Order for Judgment relied on the rule announced by the Minnesota Supreme Court's decision in Schneider v. Buckman. 433 N.W.2d 98. In Schneider, the Court applied the 1986 version of Minnesota Statute § 604.02. At that time, subd. 1, the portion governing when a party may be liable for the entire jury award, provided in pertinent part:

When two or more persons are jointly liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that each is jointly and severally liable for the whole award.

Minn. Stat. § 604.02 subd. 1. Under this version of the statute, there were no exceptions to joint and several liability. Any person assigned any amount of liability could be jointly and severally liable for a jury's award to a plaintiff. There was no threshold of fault to be met before joint and several liability for the entire

award attached. Furthermore, the statute required joint liability before the remaining provisions of the statute applied.

It was on this backdrop that Schneider was decided. In Schneider, the plaintiff sued an ambulance owner and employee for injuries plaintiff sustained in being transferred between hospitals. At trial, the defendant ambulance owner, Buckman, and his employee Laska were included on the verdict form, as were two non-parties: Dr. Joseph McGrath and St. Elizabeth's Hospital. The jury found Buckman 60% at fault (considering Buckman's own fault-35% - and his vicarious fault for his employee - 25%). The jury also found Dr. McGrath to be 20% at fault and St. Elizabeth's Hospital to be 20% at fault. The trial court issued an order holding Buckman liable for 100% of the award, despite the fact he was found to only be 60% liable for plaintiff's injuries. Buckman appealed this decision. Buckman argued that the fault of the hospital and Dr. McGrath should not be reallocated to him because there had not yet been a finding that the judgment was not collectable pursuant to Minnesota's joint and several liability statute Minnesota Statute § 604.02 subd. 2. Importantly, this case arose in the context of the reallocation provision of the joint and several liability statute, and was not simply a case purporting to address § 604.02 subd. 1, which is at issue here.

The Minnesota Supreme Court affirmed the trial court's decision assigning 100% liability to Buckman. The Minnesota Supreme Court determined that the reallocation procedures of Minnesota Statute § 604.02 subd. 2 were not

implicated because Buckman was the sole defendant against whom judgment could be entered. The Court commented, in dicta, that the fact that the jury, in its task of apportioning liability among the various tortfeasors, had determined that Buckman's individual negligence was 35% of the total was of no practical consequence when there were no other defendants against whom judgment could be entered. The Court held that the reallocation provision of Minnesota Statute § 604.02 subd. 2 were inapplicable, and therefore Buckman was liable for 100% of the damages awarded to Plaintiff. The Court did not provide a rationale as to why the default result where Buckman was the only party was that Buckman was to be 100% liable for the jury's award.

The holding in Schneider is distinguishable from this case given the changes to Minnesota Statute § 604.02 subd. 1. The Schneider Court held the reallocation provisions of the joint and several liability statute did not apply because joint liability did not exist between the parties. Indeed, it is well settled that there can be no reallocation unless joint liability is established. Eid v. Hodson, 521 N.W.2d 862, 864 (Minn. Ct. App. 1994). The Schneider Court went further to state the entire joint liability statute did not apply because there was no joint liability between Buckman, a party, and other non-parties. However, the legislature remedied the problem presented by Schneider by amending the statutory language, thereby eliminating the requirement of "joint liability" as a pre-requisite for the application of the statute, and instead simply requiring "two

or more persons [be] severally liable.” Due to this amendment and the distinct change of the statutory language, the rule in Schneider no longer applies.

Furthermore, the Schneider Court seems to assume the joint and several liability statute required “joint liability for a judgment” before the statute could take effect. Importantly, the Court does not expressly issue this rule, nor does the Court acknowledge its assumption. The Court simply states, without authority, the fact that Buckman’s individual negligence was 35% “was of no practical consequence when there are no other defendants against whom judgment can be entered.” While this statement may be accurate for the purposes of reallocation under the 1978 version Minnesota Statute § 604.02, this assumption plainly ignores the ruling in Maday v. Yellow Taxi of Minneapolis that liability arises when negligence concurs to cause injury, not when persons are jointly responsible for a judgment. 311 N.W.2d 849, 850 (Minn. 1981). The Court in Schneider was not forced to recognize this distinction, because the Court was only asked to analyze the application of the reallocation provision of the joint and several liability statute. This case is distinguishable, and the unsupported dicta, while possibly leading to the correct application of Minnesota Statute § 604.02 subd. 2 at the time Schneider was decided in 1988, has no influence on the interpretation and application of the amended language of Minnesota Statute § 604.02 subd. 1, relating to when a person is jointly or severally liable in the first instance, not reallocation after liability has already been established. Accordingly, the ruling in Schneider v. Buckman is inapposite and should not

guide the Court's interpretation of the amended language of Minnesota Statute § 604.02 subd. 1 (2003).

**CONCLUSION**

The plain language of Minnesota Statute § 604.02 subd. 1 provides a person is only obligated to pay his or her proportionate share of a plaintiff's damages. Minn. Stat. § 604.02 subd. 1 (2003). A person is only jointly liable for the entire jury verdict if the person is more than 50% at fault for a plaintiff's damages. Id. This statute applies where the negligence of two or more persons concurs to cause injury, regardless of whether all at-fault persons are named in a lawsuit as parties.

The jury in this case determined the Diocese and Mr. Staab were both negligent, and that this negligence combined to cause Respondent's injuries. The Diocese was found to be 50% at fault. Because the Diocese is not more than 50% at fault, it is not jointly liable for the entire verdict. Id. Accordingly, the District Court's order requiring the Diocese to pay 100% of Respondent's damages should be reversed and the judgment amended to only require payment of 50% of the damages awarded by the jury.

QUINLIVAN & HUGHES, P.A.

Dated: 08-19-09

By: 

Dyan Jean Ebert # 0237966

Laura A. Moehrle #0348557

Attorneys for Appellant

P.O. Box 1008

St. Cloud, MN 56302-1008

Phone: (320) 251-1414

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(c), the undersigned hereby certifies, as counsel for Appellant Diocese of St. Cloud, that this brief was prepared in Microsoft Word 2000, using 13-point Georgia proportionally-spaced font, and further certifies that this brief complies with the type-volume limitation as there are 7,307 words in this brief, excluding parts of the brief exempted by Minn. R. Civ. App. P. 132.01 subd. 3, according to Microsoft Word 2000's word count.

QUINLIVAN & HUGHES, P.A.

Dated: 08-19-09

By: 

Dyan Jean Ebert # 0237966  
Laura A. Moehrle #0348557  
Attorneys for Appellant  
P.O. Box 1008  
St. Cloud, MN 56302-1008  
Phone: (320) 251-1414