

---

**State of Minnesota**  
**In Supreme Court**

---

ALICE ANN STAAB,

*Appellant,*

VS.

DIOCESE OF ST. CLOUD,

*Respondent.*

---

**BRIEF OF AMICUS CURIAE**  
**MINNESOTA DEFENSE LAWYERS ASSOCIATION**

---

BURKE & THOMAS, PLLP  
Richard J. Thomas (#137327)  
Bryon G. Ascheman (#237024)  
Corinne Ivanca (#0386744)  
3900 Northwoods Dr., Suite 200  
St. Paul, MN 55112  
Telephone: (651) 490-1808

*Attorneys for Amicus Curiae*  
*MN Defense Lawyers Assoc.*

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

*Attorneys for Respondent*  
*Diocese of St. Cloud*

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

PEMBERTON, SORLIE, RUFER  
& KERSHNER, P.A.  
H. Morrison Kershner (#55426)  
110 North Mill Street  
P.O. Box 866  
Fergus Falls, MN 56538-0866  
Telephone: (218) 736-5493

*Attorneys for Appellant*  
*Alice Ann Staab*

**TABLE OF CONTENTS**

Statement of the Case.....1

Summary of Argument.....2

Argument.....2

Conclusion.....7

**TABLE OF AUTHORITIES**

**STATUTES**

Minn. Stat. § 604.02 .....*passim*

Minn. Stat. § 645.17(1) .....7, 8

## **STATEMENT OF THE CASE**

This appeal results from the trial court's ruling that Minn. Stat. § 604.02 does not apply where there is only one defendant against whom judgment may be entered and, as a result, that defendant's liability is not several but is subject to full joint and several liability. The Minnesota Court of Appeals reversed the trial court's ruling, holding that Minn. Stat. § 604.02 applies no matter the number of defendants. This appeal follows.

## SUMMARY OF ARGUMENT

The interpretation of Minn. Stat. § 604.02 that the Appellant advances – that the statute applies only when there is more than one defendant against whom judgment is entered – will result in unjust and arbitrary judgments. In enacting the 2003 amendment to § 604.02, the legislature intended to limit the application of joint and several liability, not extend it. It certainly did not intend create a rule where the ultimate responsibility for injury is based on the tactical maneuvering of plaintiff's attorneys rather than a jury's assessment of fault. The MDLA respectfully asks the Court to affirm the court of appeals.

## ARGUMENT

The trial court's holding, if affirmed, will produce inconsistent and arbitrary results when applied in practice. The liability of a party should depend upon conduct and substantive law – not the number of parties joined in the lawsuit. The Minnesota Defense Lawyers Association ("MDLA") urges this Court to affirm the court of appeals' ruling, and hold that Minn. Stat. § 604.02 applies to all cases, whether one defendant or many are named.

Interpreting the statute as the trial court has will promote inequality and arbitrariness – the precise qualities that 2003 amendments to Minn. Stat. § 604.02 sought to remedy. The MDLA's first concern is with fairness – the rule advanced by Appellant will result in a minimally at-fault defendant being held jointly liable for the entire award despite the 2003 legislature's obvious intent to correct such injustice. Second, this rule will produce arbitrary results for defendants, because whether a defendant is held jointly

liable for an entire award will depend on the fortuity of whether additional defendants are present at the time of entry of judgment – something beyond the defendant's control – rather than upon a defendant's actual percentage of fault. Such a rule turns litigation into a "hunt for the deep pocket" rather than a resolution of disputes based upon conduct and actual culpability. Third, the rule will discourage fair settlements based on evaluations of fault by rewarding plaintiffs who target minimally at-fault "deep pocket" defendants to take advantage of a loophole which provides a unique opportunity to obtain full recovery.

Importantly, the 2003 amendment to § 604.02 was the latest in Minnesota's limitation of the concept of joint and several liability. While previous amendments imposed successively broader limits on the scope of the general rule of joint and several liability, the 2003 amendment went even further and *changed the general rule*. The 2003 amendment made several liability the general rule and created a list of exceptions in which joint liability is imposed. After the 2003 amendments, a defendant can no longer be jointly liable unless it is found to be more than 50% at fault.<sup>1</sup> This principle leveled the playing field for minimally at-fault defendants, reducing the possibility of joint liability and making fair settlements easier to reach. To interpret § 604.02 as the Appellant urges would be to both ignore this history and to find that the legislature intended an absurd and arbitrary result.

Perhaps ironically, the trial court's interpretation of Minn. Stat. § 604.02 places the greatest burden of paying injury loss on those least at fault and encourages plaintiffs to forgo suit against those whose conduct is most responsible for the damages. In the trial

---

<sup>1</sup> With other exceptions that are not applicable here. See Minn. Stat. § 604.02.

court's interpretation, including all at-fault defendants would destroy joint and several liability for those parties whose fault is 50% or less. Pursuant to the trial court's ruling, excluding all but one at-fault defendant, regardless of percentage of fault, creates full joint and several liability for that defendant. This unintended consequence of fully burdening those least at fault was never the intent of the legislature.

While Appellant is correct in stating that court of appeals' interpretation of the statute may result in plaintiffs having to sue more defendants in order to ensure maximum recovery, this observation is nothing more than an acknowledgement that those who are responsible for injuries should be brought before the court to answer accordingly. It makes no sense to argue that such accountability should be abandoned in favor of pursuing those least responsible only because that party can pay.

The problems created by the trial court's ruling are illustrated by the following examples:

Example 1:

Assume potential defendant 1 (D1) is 5% at fault, and potential defendant 2 (D2) is 95% at fault. Also assume that D1 has a high-limits insurance policy or great solvency and D2 has neither. If plaintiff sues D1 only, D1 would be held liable for the entire verdict, even though it is only 5% at fault. If plaintiff were to sue both D1 and D2, D2 would be jointly liable for the whole amount of the award and D1 would only be severally liable for 5%. Thus, the plaintiff would, ironically, reduce his ability to collect the full award by obtaining a judgment against the party whose fault is overwhelmingly responsible for the injury. As a result, the plaintiff has an incentive to sue only D1, even

though D1 is minimally at fault, because an individual judgment against D1 allows for a full recovery while a judgment against both defendants does not. Such an interpretation turns justice on its head – the driving factor for accountability is no longer culpable conduct but money in the bank. The focus of civil litigation is now just a search for money rather than the redress of tortious conduct.

Minnesota cannot embrace a tort system whereby a party's liability is not dependent upon fault but upon the pleading strategy of plaintiff's counsel. The ruling of the trial court creates the very nightmare that the 2003 legislature thought it was correcting – minimally at-fault defendants paying the share of the substantially at-fault defendant. Indeed, the trial court's ruling makes Minnesota law worse for the minimally at-fault defendant than at any time in recent history. Under the trial court's ruling, the plaintiff will be required to maintain the action against only the highly solvent, minimally at-fault defendant and leave the substantially at-fault, but minimally solvent, defendants alone.

It is important to note that the defendant cannot cure this problem through third-party practice. Although D1 could assert third-party claims against D2 to bring D2 into the case, D1 would only have a contribution and/or indemnity claim against D2, and D2 would not be jointly and severally liable with D1 as to the plaintiff's claims, even though D2 is 95% at fault, since the plaintiff never asserted claims against D2. D1 would only be able to collect against D2 after D1 paid 100% of the judgment, but there would be no recovery because D2 is minimally insured and judgment-proof, which is the very reason D1 would choose not to name D2 in the first place.

Example 2:

Assume a plaintiff has no fault, potential defendant 1 (D1) is insured and is 5% at fault, potential defendant 2 (D2) is uninsured and is 5% at fault, and potential defendant 3 (D3), a family member of the plaintiff, is 90% at fault. The plaintiff chooses not to sue D3. Under the trial court's interpretation of the statute, if the plaintiff chose to sue either D1 or D2, but not both, D1 or D2 will be responsible for the entire amount of the award, even though that defendant was only found to be 5% at fault. Conversely, if the plaintiff sued both D1 and D2, each would only be severally responsible for 5% of the damage award.

Even if the plaintiff sued both D1 and D2, if one of the defendants subsequently settled with the plaintiff with a Pierringer release, the remaining defendant would be held jointly liable for the entire reward, because it would be the only remaining party against whom judgment could be entered.

Just as in the previous example, this rule would encourage targeting minimally at-fault, insured or solvent defendants. Indeed, that deep-pocket party will never be able to settle based upon fault but will be kept in the case as the only source of full payment. The most at-fault defendant would escape liability. Again, the ultimate liability of D1 and D2 would be arbitrary as it would depend on whether or not the plaintiff asserted claims against each potential defendant and this decision will be based entirely upon a defendant's ability to pay.

Further, if the plaintiff sued all three defendants in this example, and a jury returned a verdict finding D1 and D2 5% at fault, and finding D3 90% at fault, a plaintiff

could conceivably settle claims against D2 (the defendant without insurance or resources) and D3 (the family member) prior to entry of judgment, leaving D1 (the solvent or insured defendant) with joint liability for the entire award even though D1's expectation had been to be severally liable due to its minimal fault and the presence of the other defendants. This rule would therefore encourage tactical maneuvering in litigation rather than honest evaluations of fault for settlement purposes.

### CONCLUSION

The rules of statutory construction provide that the legislature never intends an absurd result. See Minn. Stat. § 645.17(1). Nothing would be more absurd than to determine a party's joint and several liability obligation on the status of the parties at the time judgment is entered rather than upon a party's given percentage of fault. In 2003, the legislature, by passing Minn. Stat. § 604.02, specifically intended to provide relief to those defendants who are 50% at fault or less. It was clearly never the legislature's intent to increase the liability of a minimally at-fault defendant and return to the status of the law prior to the legislature's previous attempts to limit the effects of joint and several liability pursuant to its 1988 amendments. In addition, the legislature clearly never intended to create a result whereby the plaintiff would have an incentive to not bring an action against the party most responsible for injury and damage because, by doing so, plaintiff would eliminate the ability to recover the full amount of the award against a minimally at-fault, but solvent, defendant.

It is the stated goal of the Minnesota Defense Lawyers Association to preserve a "level playing field" for all litigants. It is the single rallying cry upon which the MDLA

approaches these issues pursuant to amicus briefing and in its voluntary efforts before the legislature. Unfortunately, the trial court's ruling in this case creates one type of playing field where multiple defendants are present and an entirely different playing field when plaintiff elects to maintain the action against the minimally at-fault defendant only. Such an interpretation creates the result that is "absurd, impossible of execution, or unreasonable" in violation of Minn. Stat. § 645.17(1).

In conclusion, the MDLA urges this Court to apply a rule that will result in fairness and consistency for civil litigants in Minnesota. The MDLA respectfully requests that this Court uphold the court of appeals and hold that Minn. Stat. § 604.02 applies to all cases of fault, whether one defendant or many are named.

Respectfully submitted,

Dated: 7-26, 2010.

BURKE & THOMAS, PLLP

By

  
Richard J. Thomas (#137327)  
Bryon G. Ascherman (#237024)  
Corinne Ivanca (#0386774)

3900 Northwoods Drive, Suite 200

St. Paul, MN 55112

Tel: (651) 490-1808

Fax: (651) 490-1872

ATTORNEYS FOR AMICUS CURIAE  
MINNESOTA DEFENSE LAWYERS  
ASSOCIATION

**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 1,911 words. This brief was prepared using Microsoft® Office Word 2003 for Windows.

Dated: 7-26, 2010.

BURKE & THOMAS, PLLP

By



Richard J. Thomas (#137327)

Bryon G. Ascherman (#237024)

Corinne Ivanca (#0386774)

3900 Northwoods Drive, Suite 200

St. Paul, MN 55112

Tel: (651) 490-1808

Fax: (651) 490-1872

ATTORNEYS FOR AMICUS CURIAE

MINNESOTA DEFENSE LAWYERS

ASSOCIATION