

No. A12-1575  
A12-1972

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STATE OF MINNESOTA  
IN SUPREME COURT

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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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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

- 1. Whether the Diocese, a severally liable defendant, is subject to reallocation under Minnesota Statute § 604.02 subd. 2 so as to force that severally liable defendant to pay more than its equitable share of a jury's award.**

This issue was raised before the trial court in connection with Respondent's Motion for Reallocation pursuant to Minnesota Statute § 604.02 subd. 2. (AA-052-AA-123).

*The trial court held the Diocese is subject to reallocation. The Court of Appeals affirmed on different grounds.*

**Preservation of issue for appeal:** An appeal of this issue was taken by filing a Notice of Appeal pursuant to Minnesota Rule of Appellate Procedure 103.03 (a).

### **Apposite authority:**

Eid v. Hodson, 521 N.W.2d 862 (Minn. Ct. App. 1994)

Staab v. Diocese of St. Cloud, 813 N.W.2d 68 (Minn. 2012)

- 2. Whether the reallocation procedure of Minnesota Statute § 604.02 subd. 2 permits reallocation where no judgment has been entered.**

This issue was raised before the trial court in connection with Respondent's Motion for Reallocation pursuant to Minnesota Statute § 604.02 subd. 2. (AA-052-AA-123).

*The trial court held the reallocation procedure applies where no judgment has been entered. The Court of Appeals affirmed.*

**Preservation of issue for appeal:** An appeal of this issue was taken by filing a Notice of Appeal pursuant to Minnesota Rule of Appellate Procedure 103.03 (a).

### **Apposite authority:**

Minn. Stat. § 604.02 subd. 2 (2003)

Hosley v. Pittsburgh Corning Corp., 401 N.W.2d. 136, 139 (Minn. Ct. App. 1987)

**3. Whether the reallocation procedure of Minnesota Statute §604.02 subd. 2 permits the reallocation of a non-party's equitable share of a jury's award.**

This issue was raised before the trial court in connection with Respondent's Motion for Reallocation pursuant to Minnesota Statute § 604.02 subd. 2. (AA-052—AA-123).

*The trial court held a non-party's share of a jury award is subject to reallocation. The Court of Appeals affirmed.*

**Preservation of issue for appeal:** An appeal of this issue was taken by filing a Notice of Appeal pursuant to Minnesota Rule of Appellate Procedure 103.03 (a).

**Apposite authority:**

Minn. Stat. § 604.02 subd. 2 (2003)

Staab v. Diocese of St. Cloud, 813 N.W.2d 68 (Minn. 2012)

Hosley v. Pittsburgh Corning Corp., 401 N.W.2d. 136, 139 (Minn. Ct. App. 1987)

## STATEMENT OF THE CASE AND RELEVANT FACTS

This premises liability action was submitted to a jury trial on March 24, 2009 with the Honorable John H. Scherer of the Stearns County District Court presiding. Respondent Alice Staab was injured after her husband, Richard Staab pushed her wheelchair off a step on premises of the Holy Cross Parish. 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 Richard Staab were included on the jury verdict form as potentially at fault parties. The jury found both the Diocese and Richard Staab negligent and a cause of Respondent’s injuries and attributed 50% fault to the Diocese and 50% fault to Richard Staab. (AA-011—AA-013).

Following the trial, the Court issued Findings of Fact, Conclusions of Law and an Order requiring the Diocese to pay 100% of the jury’s verdict, despite the jury’s finding of only 50% liability against the Diocese. (AA-014—AA-019). This decision was appealed by the Diocese. The Court of Appeals reversed the decision of the District Court, holding the Diocese was severally liable and therefore responsible for paying only its fair share (50%) of the jury’s award.

After the Court of Appeals opinion was issued, Respondent filed a Motion for Reallocation in Stearns County District Court, alleging the amount of the jury award attributable to Richard Staab was uncollectable and requesting an Order

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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.

from the District Court reallocating the remaining 50% of the jury's award to the Diocese. (AA-052—AA-063, AA-070—AA-075). The Diocese opposed this motion. (AA-064—AA-069). Before the hearing and argument on the motion, Respondent petitioned the Minnesota Supreme Court for further review of the Court of Appeals' decision. In light of the pending appeal, the District Court determined it had no jurisdiction to address Respondent's reallocation motion until the underlying appeal had been resolved.

The Minnesota Supreme Court accepted review and affirmed the decision of the Court of Appeals, holding when a jury attributes 50% of the negligence that caused a compensable injury to a sole defendant and 50% to a nonparty to the lawsuit, Minnesota Statute §604.02 subd. 1 applies and requires that the defendant (here the Diocese) contribute to the award only in proportion to the percentage of fault attributed to it by the jury. (AA-020—AA-051). The Minnesota Supreme Court remanded the matter to the District Court for entry of judgment consistent with its decision. Id.

Following the Supreme Court's Order, Respondent reasserted her Motion for Reallocation. (AA-076—AA-111). The Diocese again opposed this motion. (AA-112—AA-123). On August 8, 2012, and in accordance with the Supreme Court's Order for Remand and Entry of Judgment, the District Court entered an Order for Judgment in favor of Respondent in the amount of \$135,793.38, representing 50% of the jury's verdict. (A. Add.-11—A. Add.-13). Significantly, no judgment was entered against Richard Staab and no judgment was entered representing the

remaining 50% of the jury's award. On the same date, the District Court also issued an Order for Judgment and Memorandum granting Respondent's Motion for Reallocation pursuant to Minnesota Statute § 604.02 subd. 2, and ordered the Diocese to pay the remaining 50% of the jury's award attributed to Richard Staab. (A. Add.-01—A. Add.-10). The Diocese appealed from the District Court's Order and Judgment regarding reallocation. The Court of Appeals affirmed the decision of the District Court.

## **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**

### **I. UNDER THE STATUTE, LEGISLATIVE HISTORY AND RELEVANT CASELAW, SEVERALLY LIABLE DEFENDANTS ARE NOT SUBJECT TO REALLOCATION.**

Joint liability and several liability are long-standing common law concepts with separate and distinct meanings. Succinctly,

[t]he difference between [joint and several liability and several liability] is that a “jointly and severally liable” defendant is responsible for the entire award, whereas a “severally liable” defendant is responsible for only his or her equitable share of the award.

Staab v. Diocese of St. Cloud, 813 N.W.2d 68, 74 (Minn. 2012) (AA-028)

[emphasis added] (hereinafter “Staab II”).<sup>2</sup> By definition, a defendant who is severally liable must only pay in proportion to his or her fault. This definition of several liability is well-established, and is undisputed.

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<sup>2</sup> The Court of Appeals cited to this Court's prior decision in this case as “Staab II.” For ease of reference, the Diocese will use the same designation.

The fundamental difference between joint liability and several liability is the touchstone of this appeal. With full knowledge of the law and the difference between joint liability and several liability, the Minnesota Legislature purposefully amended Minnesota Statute § 604.02 subd. 1 in 2003, and in doing so made a deliberate decision to hold some defendants severally liable, and other defendants jointly liable. Minn. Stat. § 604.02 subd. 1 (2003). These changes decreed that tortfeasors who are 50% or less at fault for an injury are no longer jointly liable, but instead severally liable and as a consequence, would no longer be forced to pay more than its fair share of damages. *Id.*, *Staab II*, 813 N.W.2d at 80. The Legislature also recognized that no changes to subdivision 2 of the statute were necessary and therefore did not amend this section. Minn. Stat. § 604.02 subd. 2 (2003). The statute reads:

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

1. a person whose fault is greater than 50%

[...]

**Subd. 2.** Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Minn. Stat. § 604.02 subd. 1, 2. (2003). When this matter came before this Court in 2012, the Court addressed the proper interpretation and application of subdivision 1 of the statute. After consideration of the language used, the legislative history and intent, and other authorities, this Court recognized the Legislature's intention to reduce the scope of joint liability, to ensure that minimally at fault defendants did not pay damages in disproportion to their fault. Staab II, 813 N.W.2d at 78; (AA-035). This Court held the Diocese was severally liable pursuant to the statute and therefore was only required to pay its fair share (50%) of Respondent Alice Staab's damages. Staab II, 813 N.W.2d at 80; (AA-040). Indeed, in construing the meaning of subdivision 1 in Staab II, this Court stated:

The next clause of subdivision 1 provides that "contributions to awards shall be in proportion to the percentage of fault attributable to each." We construe this clause to provide that the principle of several liability limits the magnitude of a severally liable person's contribution to an amount that is in proportion to his or her percentage of fault, as determined by the jury. [...] Contrary to the dissent's assertion, **the clause is not made ineffective if a severally liable person who is not a party to the lawsuit and not subject to an adverse judgment makes no contribution. The clause would be ineffective, however, if a severally liable person were compelled to contribute out of proportion to his or her percentage of fault.**

Staab II, 813 N.W.2d at 76. [emphasis added]. This Court has already recognized that subdivision 1 of the statute would be ineffective and meaningless if a severally liable defendant like the Diocese could be reallocated fault and forced to pay more than its fair share of the jury's award. Id.

Because of the Legislature's careful and well-thought amendments to §604.02 subd. 1, the rule in Minnesota is that a defendant cannot both be deemed severally liable and simultaneously ordered to pay more than its fair share of damages. Yet, by the decisions of the District Court and the Court of Appeals in their interpretation and application of Minnesota Statute § 604.02 subd. 2, this is the paradox now before this Court. The lower courts have interpreted subdivision 2 of the statute differently, but both the District Court and the Court of Appeals have concluded that the statute requires the Diocese, a severally liable party, to pay more than its fair share of damages. (A. Add.-01–A. Add.-10; AA-127–AA-142). These holdings wholly eviscerate the concept of several liability approved by the Legislature and this Court's holding in Staab II.

The lower courts' holdings create a statutory scheme in which the protections intentionally given to minimally at fault defendants under Minnesota Statute § 604.02 subdivision 1 are simultaneously revoked by subdivision 2 – an absurd result which is contrary to the canons of statutory interpretation. Minn. Stat. § 645.17. In the thirty-five years since its enactment, subdivision 2 has never applied to a severally liable party, and there has been no amendment to subdivision 2 since its enactment to indicate a legislative intent to change the way the law has always been applied.

The core concept of several liability – the obligation to only pay one's fair share of damages - cannot be reconciled with the lower courts' holding requiring the Diocese to pay more than its fair share. But the lower courts' errors run

deeper than being contrary to the statutory language, legislative intent, over three decades of case law, and common law. To affirm the lower courts' decisions on reallocation, this Court must reject the fundamental premise – indeed the very definition – of several liability. For these reasons, and the reasons stated herein, the lower courts' holdings requiring the Diocese, a severally liable party, to pay more than its equitable share of a jury award, must be reversed.

**A. Forcing a Severally Liable Defendant to Pay More than its Equitable Share of Damages via Reallocation is Contrary to the Plain Language of the Statute.**

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Minn. Stat. § 645.16. When a statute, read according to ordinary rules of grammar, is unambiguous, the plain language is to be 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 is subject to more than one reasonable interpretation. Am. Family Ins. Group v. Schroedl, 616 N.W.2d 273, 277 (Minn. 2000). When the words of a law are not explicit, the intention of the legislature may be ascertained by considering the occasion and necessity for the law, the circumstances under which it was enacted, the mischief to be remedied, and the object to be attained. Minn. Stat. § 645.16.

Courts should assume that the Legislature does not intend a result that is absurd, impossible of execution, or unreasonable. Minn. Stat. § 645.17. Courts instead should assume the Legislature intends the entire statute to be effective and certain Id. Although the rule of strict construction is applied to a statute in

derogation of the common law, it should nevertheless be construed sensibly and in harmony with the purpose of the statute so as to advance and render effective such purpose and the intention of the legislature. Maust v. Maust, 23 N.W.2d 537, 540 (Minn. 1946). The strict construction should not be pushed to the extent of nullifying the beneficial purpose of the statute, or lessening the scope plainly intended to be given thereto. Id.

Despite the Court's decision in Staab II, the lower courts erroneously applied Minnesota Statute § 604.02 subd. 2 (the "reallocation statute") to compel the Diocese to pay more than its fair share of damages. In reaching this holding, the lower courts in this matter have not identified the language of subdivision 2 as "ambiguous" nor have the courts identified any area of particular ambiguity created by the statutory language. (AA-127—AA-142 and AA-014—AA-019).

The Legislature did not amend subdivision 2 of the statute in 2003. The Legislature's decision not to amend subdivision 2 is direct evidence that the Legislature intended no change in the way the statute was applied, only to jointly liable parties as it had for the previous 25 years. As discussed in Sections I (B) and (C) below, the reallocation statute has only applied in cases where the parties subject to reallocation were jointly liable. Indeed, Minnesota Courts have repeatedly held that reallocation does not apply where the party subject to reallocation is severally liable. Eid v. Hodson, 521 N.W.2d 862, 864 (Minn. Ct. App. 1994); Hahn v. Tri-Line Farmers, 478 N.W.2d 515 (Minn. Ct. App. 1991);

Newinski v. Crane, A08-1715, 2009 WL 1752011 (Minn. Ct. App. June 23, 2009) (unpublished) (AA-144—AA-152).

The purpose of subdivision 2 was never to convert several liability into joint liability, or to enlarge the maximum amount of damages a minimally at fault tortfeasor would have to pay. Instead, the purpose of the statute was to ensure that all parties jointly responsible for the same judgment, bore proportionate responsibility for satisfying that shared judgment, even where one joint tortfeasor was unable to pay. This purpose is wholly in line with the plain language of the statute, and the plain language of the statute should be followed.

The statutory language is clear. The plain language of the statute speaks of a singular judgment. Minn. Stat. § 604.02 subd. 2. The statute does not speak of a plurality of “judgments” or “obligations.” Id.

The plain language of the statute, instead, provides that reallocation should occur where there is a single judgment and the responsibility for that entire judgment is shared among multiple tortfeasors – the very definition of joint liability. Id. When parties are jointly liable for a judgment, reallocation can occur without the entry of a new judgment against any party. When a party is jointly liable, that party must pay, at minimum, its fair share of a judgment but is subject to a judgment for and thus pay up to 100% of the judgment if other tortfeasors are unable or unwilling to pay.

The plain language of the statute does not provide any mechanism by which a judgment may be entered to allow for reallocation, and instead assumes

the existence of a judgment for which multiple parties are liable. The District Court's August 8, 2012 entry of a new judgment in connection with its Order for Reallocation in this case is demonstrative of the lower courts' misinterpretation and misapplication of the reallocation statute. The statute does not provide an avenue for the imposition of a new judgment. The plain language of the reallocation statute also does not contemplate the reassignment of a judgment from a party who is liable for that judgment to a person who was not liable for that judgment at the time the judgment was entered. Id. Instead, the statute contemplates a redistribution of an existing, shared judgment between jointly liable parties.

The Court of Appeals reasoned that because the statute does not specifically exclude severally liable parties from reallocation, it declined to read that limitation in to the statute. (AA-131). The Court of Appeals also thought it significant that the Legislature amended subdivision 1 of the statute in 2003 to enlarge the scope of several liability, but left subdivision 2 in tact, commenting that had the Legislature intended the statute to only apply to jointly liable parties, it could have expressly said so. Id.

The Court of Appeals' reasoning is erroneous. The Legislature did not need to specifically exclude severally liable parties from reallocation. The definition of "several liability" makes any language to that effect redundant. By definition, a severally liable party must only pay its fair share of damages, and thus would not be required to pay more via reallocation under any circumstance. No additional

statutory language is required to clarify what it means to be severally liable. The plain language of the statute also clearly applies to a singular judgment jointly shared by more than one party, which only occurs where parties are jointly liable for the judgment and is not inclusive of a defendant who is severally liable.

**B. Forcing a Severally Liable Defendant to Pay More than its Equitable Share of Damages via Reallocation is Contrary to the Legislative History and Intent in Enacting Minnesota Statute § 604.02.**

Statutes are presumptively 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). 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. When two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail. Minn. Stat. § 645.26 subd. 4.

The lower courts’ holdings in this case create a result that is contrary to the history of the joint and several liability statute and the Legislature’s demonstrated effort and intent to limit the scope of joint and several liability over the past three decades. Minnesota Statute § 604.02 was enacted in 1978. At the time it was enacted, subdivision 1 of the statute provided all defendants were

jointly and severally liable for payment of damages, regardless of relative fault. Subdivision 2 governed the reallocation a judgment among the aforementioned jointly liable tortfeasors.

Since its enactment, subdivision 1 of the statute relating to which defendants are jointly liable and which are severally liable has been modified several times. The modifications to Minnesota Statute § 604.02 subd. 1 span more than twenty years and “provides an unbroken chain of legislative intent to limit joint and several liability in Minnesota.” Staab II, 813 N.W.2d at 77; (AA-033).

In 1986, subdivision 1 was amended to reduce joint liability by adding a cap on the amount of damages to be paid by minimally at fault governmental entities. In 1988 subdivision 1 was amended again to protect all minimally at fault defendants from the burden of joint and several liability by operation of the “4 x 15” rule. Minn. Stat. § 604.02 subd. 1 (1988). The statute provided a person whose fault is 15% or less was 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. Id. For the 15 years leading up to the 2003 amendments, a minimally at fault but jointly liable defendant’s maximum contribution to a jury’s award was capped, reducing that minimally at fault yet jointly liable defendant’s exposure to the full force of joint and several liability. Id. This cap included amounts subject to reallocation, evidencing the legislature’s intent to ensure that the caps provided in subdivision 1 were effective and

minimally at fault defendants were not required to shoulder the burden of another tortfeasor's insolvency, a matter entirely outside the defendant's control.

When the legislature amended Minnesota Statute § 604.02 subd. 1 in 2003, it eliminated the "4 x 15" rule in favor of a scheme that would further restrict the application of joint and several liability, rendering persons with 50% or less fault severally liable and responsible only for their fair share of the jury's award. See Staab II, 813 N.W.2d at 77. In amending the statute to make several liability the default rule, the Legislature removed "4 x 15" rule language, as this language was no longer necessary. Minn. Stat. §604.02 subd. 1 (2003). Under the amended statute, a defendant who was previously jointly liable despite minimal fault was now deemed severally liable and therefore only obligated to pay his equitable share of a judgment so long as that person was 50% or less at fault. Stated otherwise, a severally liable defendant's contribution remained "capped" at the defendant's allocation of fault as determined by subdivision 1. If a defendant was jointly and severally liable as defined in the statute, that defendant would then be severally liable for its equitable share, but also jointly liable for the entire award and subject to reallocation.

Since 1978, subdivision 1 of the joint and several liability statute alone has governed the magnitude – or the "maximum amount" – of a defendant's liability for a judgment. Conversely, subdivision 2 has never determined the magnitude of a defendant's liability for a judgment. Instead, subdivision 2 has operated only to calculate the exact amount of a judgment owed by each jointly liable defendant

within the “maximum amount” dictated by subdivision 1 when a portion of the judgment was uncollectible from one or more jointly liable defendants.

Invoking reallocation under subdivision 2 does not increase the amount a plaintiff is entitled to collect pursuant to a judgment. Indeed, to the contrary, where a plaintiff bears some fault, reallocation serves to reduce the amount a plaintiff can collect by forcing a plaintiff (who is found at fault) to shoulder a proportionate burden of uncollectibility. The purpose of the reallocation statute is to ensure a jointly and severally liable defendant, who would otherwise be legally obligated to pay 100% of a judgment if a co-tortfeasor could not pay, to pay less than 100% of the judgment by asking the court to equitably distribute that uncollectible share among all jointly liable, solvent parties bearing fault, including an at fault plaintiff.

The lower courts’ holdings regarding reallocation not only ignore the legislative history and legislative intent of the entire comparative fault statute, but effectively enacts a change in the way the law is applied without any change in the statutory language. To date, the reallocation procedures contained in Minnesota Statute § 604.02 have been used in a relatively small number cases. In the handful of times the statute has been invoked and applied, however, the statute has been used defensively by a solvent, jointly and severally liable defendant to ensure other at-fault parties, who were also jointly liable for a judgment, help carry the burden of an insolvent tortfeasor. See e.g., Gregor v. Clark, 560 N.W.2d 744 (Minn. Ct. App. 1997); Frederickson v. Alton M. Johnson

Co., 402 N.W.2d 794 (Minn. 1987); Hosley v. Pittsburgh Corning Corp., 401 N.W.2d 136 (Minn. Ct. App. 1987). Most reallocation cases involve other solvent defendants or plaintiffs who bear some fault either through their own negligence or because they have assumed the negligence of other tortfeasors through operation of a Pierringer release. Id.

In fact, until 2012, a motion for reallocation had never been successfully made by a plaintiff, and a severally liable defendant had never been held subject to reallocation. See O'Brien v. Dombeck, 823 N.W.2d 895 (Minn. Ct. App. 2012); Staab v. Diocese of St. Cloud, 830 N.W.2d 40 (Minn. Ct. App. 2013); (AA-127—AA-142). Notably, there are various cases in which a plaintiff has not received “full compensation” (or 100% of a jury’s award) even where reallocation has been invoked, because full recovery was barred by operation of several liability, municipal damage caps, or other statutory provisions. See Eid, 521 N.W.2d at 864 (Minn. Ct. App. 1994); McCarty v. City of Minneapolis, 654 N.W.2d 353 (Minn. Ct. App. 2002); Hahn, 478 N.W.2d 515 (Minn. Ct. App. 1991).

Consequently, the lower courts’ interpretation and application of the reallocation statute eviscerates the Legislature’s deliberate efforts to expand several liability and limit joint liability. The lower courts’ holding on reallocation in this case is therefore contrary to the demonstrated purposes of the reallocation statute and the intentions of the Legislature in amending Minnesota Statute § 604.02 subd. 1, and in fact broadens joint and several liability to its most expansive since 1988. The lower courts reached this holding absent any

Legislative action to change the language of the statute, and absent any Legislative intent to change the way the statute has been applied for decades. There is no indication from the statutory language or otherwise that the Legislature intended to simultaneously reduce and enlarge the impact of joint liability when it amended subdivision 1 in 2003. This Court should therefore reject the lower courts' unauthorized and unwarranted change in the law.

**C. Forcing a Severally Liable Defendant to Pay More than its Equitable Share of Damages via Reallocation is Contrary to the Prior Decisions of the Minnesota Supreme Court and the Minnesota Court of Appeals.**

Minnesota case law, prior to the lower courts' decisions in this case and O'Brien v. Dombeck, unequivocally establishes the reallocation provisions of the joint and several liability statute do not apply where there is no joint liability. Eid v. Hodson, 521 N.W.2d 862, 864 (Minn. Ct. App. 1994) (holding "unless joint liability is established [...] Minn. Stat § 604.02 subd. 2 does not apply and there is no basis for reallocating any uncollectible amount of a judgment to another party.") Minnesota Appellate Courts have repeatedly relied upon Eid for the proposition that joint liability is required for reallocation. See Newinski v. John Crane, Inc., A08-1715, 2009 WL 1752011 (Minn. Ct. App. June 23, 2009) (unpublished) (AA-127), Hahn v. Tri-Line Farmers Coop., 478 N.W.2d 515, 522 (Minn. Ct. App. 1991) (holding the requisite joint liability required for reallocation was absent) overruled on other grounds by Conwed Corp. v. Union Carbide Chems. & Plastics Co., 634 N.W.2d 401, 414 (Minn. 2001).

In Eid, the plaintiffs purchased a house from the Hodsons through their Edina Realty agent. 521 N.W.2d at 863. The house had problems with its foundation prior to the sale, but the Hodsons assured the Eids the problems had been fixed by Scandy Concrete Company. Id. Three years after the sale to the Eids the foundation failed and the Eids filed a lawsuit against the Hodsons, Scandy, and Edina Realty. Id. The jury attributed 15% fault to the Eids, 50% fault to the Hodsons, 35% fault to Scandy and 0% fault to Edina Realty. Two separate judgments were entered, one against Scandy and one against the Hodsons. Id. The judgment against Scandy was later determined to be uncollectible and the Eids brought a motion for reallocation of Scandy's judgment to the Hodsons. Id. at 864. The Court noted the judgments against the Hodsons and Scandy were separate judgments and did not indicate that the Hodsons and Scandy were jointly liable for either judgment. The Court held that, unless joint liability is established, Minnesota Statute § 604.02 subd. 2 "does not apply and there is no basis for reallocating any uncollectible amount of a judgment to another party." Id.

Similarly, in Hahn v. Tri-Line Farmers Co-op, the Minnesota Court of Appeals declined to reallocate an uncollectible judgment on the basis of several liability. 478 N.W.2d 515, 522 (Minn. Ct. App. 1991). In Hahn, an employee who was injured on the job brought a products liability action against the manufacturer of an auger that caused his injuries. The manufacturer brought a third party action for contribution and indemnity against the employee's

employer. Id. at 521. The jury found the employer 95% at fault, the manufacturer 3% at fault and the employee 2% at fault. Id. The jury awarded \$2,197,918.00. Applying the 1986 version of Minnesota Statute § 604.02, the manufacturer was jointly liable for the entire award, despite being only 3% at fault. Minn. Stat. §604.02 subd. 1 (1986). The manufacturer was entitled to contribution from the employer in an amount equal to the amount of workers' compensation benefits the employer paid to the employee (\$543,445.00) pursuant to Lambertson v. Cincinnati Corp., 257 N.W.2d 679 (Minn. 1977). The manufacturer was ordered to pay the remaining \$1,610,515.00 as a jointly liable defendant. Hahn, 478 N.W.2d at 521. The manufacturer moved for reallocation, alleging that the remaining \$1,601,515.00 be reallocated between the manufacturer and the employee according to their respective percentages of fault. Id. at 522. The Court declined to reallocate the portion of the judgment that was "uncollectible" from the employer under Lambertson, holding that not only was the manufacturer the sole party subject to the judgment, but also the "requisite joint liability required for reallocation" between the employer and the manufacturer was absent and therefore reallocation was not appropriate. Id.

The Minnesota Supreme Court's decision in Hosley I is consistent with the Eid and Hahn decisions finding joint liability necessary for reallocation. In Hosley, the plaintiff brought a products liability action against thirteen manufacturers of asbestos products, which he alleged caused him to develop asbestosis. Hosley I, 383 N.W.2d at 290. Two of these defendants, Johns-

Mansville and Unarco Industries filed petitions for bankruptcy and were severed from the suit and the claims against these defendants were stayed under bankruptcy law. Id. All of the remaining defendants, except Pittsburgh-Corning Corporation, settled on a Pierringer basis with the plaintiff. The jury assigned 7% fault to plaintiff, 10% fault to Pittsburgh-Corning, 25% fault to Johns-Mansville, and the remaining 58% fault among the Pierringer released defendants. The jury awarded \$350,000.00 in damages. Id. After reducing the award for plaintiff's own fault and the amount of fault of the Pierringer released defendants, the Court determined Johns-Mansville and Pittsburgh-Corning were jointly liable for the remaining judgment in the amount of \$122,500. Id. Although Pittsburgh-Corning was responsible to pay 100% of this award as a jointly liable defendant, the Court acknowledged that if Johns-Mansville went through bankruptcy proceedings and was later deemed to be uncollectible, Pittsburgh-Corning would have a right to make a motion for reallocation, such that Johns-Mansville's share of the verdict (\$87,500) would need to be reallocated between both Pittsburgh-Corning and plaintiff Hosley, because Hosley was also at fault for his own injuries. Id. at 291, Fn. 1. If this occurred, Hosley would have to pay its share of Johns-Mansville's fault (\$8,166.67) via reallocation. Id. Instead of making Pittsburgh-Corning pay 100% of the jury's award only to later find Johns-Mansville uncollectable and have to ask for reimbursement from plaintiff Hosley, the Court simply stayed Hosley's "share" of Johns-Mansville's judgment until a determination of collectability could be made. Id.

Pittsburgh-Corning appealed the decision of the district court, arguing that because plaintiff Hosley had settled with several of the defendants, these settlements destroyed joint liability among all defendants and the destruction of joint liability relieved Pittsburgh-Corning of its obligation to pay the portion of the judgment attributable to other tortfeasors, including Johns-Mansville. Id. This Court held that the Pierringer releases did not destroy joint liability as between Pittsburgh-Corning and Johns-Mansville, and as a consequence, Pittsburgh-Corning was subject to reallocation. Id. Implicit in this holding is the premise that if joint liability is destroyed, there is no basis for reallocation. This Court affirmed the district court's stay of the portion of the judgment representing plaintiff Hosley's share of Johns-Mansville's fault and also the Pierringer released defendant's proportionate share of Johns-Mansville's fault because plaintiff Hosley contractually assumed responsibility for their fault via the Pierringer release. This stay was imposed to allow Pittsburgh-Corning, although jointly liable, to pay less than 100% of the jury's award in anticipation of a possible finding of uncollectibility on the part of Johns-Mansville once the bankruptcy proceedings were complete. Id.

The plain language of the reallocation statute has not changed since the time it was applied by the Minnesota Court of Appeals in Eid and Hahn and by this Court in Hosley I. In Eid and Hahn, the Court declined to impose joint liability where there otherwise was none simply because a portion of the jury's award was deemed to be "uncollectible." Instead, it is a generally accepted rule

that the reallocation provisions of Minnesota Statute §604.02 subd. 2 simply do not apply where there is no joint liability. In Hosley I the Court determined that a Pierringer release did not destroy joint liability among all defendants, and therefore reallocation was permitted. Prior decisions of this Court, as well as the Court of Appeals, require joint liability for reallocation, and as such, this Court must reverse the lower courts' orders in this case that held to the contrary.

**II. THE DISTRICT COURT'S HOLDINGS ARE CONTRARY TO THE PLAIN MEANING OF THE STATUTE, LEGISLATIVE HISTORY AND PAST PRECEDENT.**

Although not directly recognized by the Court of Appeals below, the Court of Appeals affirmed the decision of the District Court under a completely different rationale. The Court of Appeals held severally liable parties are subject to reallocation. (AA-127—AA-142). The District Court, on the other hand, acknowledged that severally liable parties are not subject to reallocation. (A. Add.-08). In issuing its holding, the District Court agreed that the Diocese is severally liable for purposes of Minnesota Statute § 604.02 subdivision 1, but held that subdivision 2 should be interpreted consistent with the common law - instead of the statute that modifies the common law - when an award is “uncollectible.” (A. Add.-04—A. Add.-10). The District Court’s holding that the common law should apply to subdivision 2 of the statute violates the succinct and precise language the Legislature enacted in subdivision 1. There is no support in the statutory language, legislative history, or case law to support the District Court’s holding that the Legislature’s definition of “several liability” should be

strictly limited so as to have no practical effect on the responsibility to pay damages as a whole.

This holding of the District Court is also in conflict with this Court's holdings in Staab II, which provides:

[W]e conclude that the 2003 amendments to the statute clearly indicate the Legislature's intent to limit joint and several liability to the four circumstances enumerated in the exception clause, and to apply the rule of several liability in all other circumstances. In order to give effect to this intent, the statute must be interpreted **to apply in all circumstances in which a person would otherwise be jointly and severally liable at common law**, and a person is liable at common law the moment the tort is committed, not as a result of a judgment.

813 N.W.2d at 78; (AA-035) [emphasis added]. Notably, this Court held the statute limits common law "joint and several liability" without limit or qualification. The Court did not hold that joint and several liability was limited for purposes of determining contributions to awards or only for purposes of subdivision 1. Id. This holding clearly indicates that the 2003 amendments to Minnesota Statute § 604.02 apply to supplant several liability for common law joint and several liability in all circumstances, except those specifically enumerated in the statute.

Contrary to this law, however, and under the District Court's rationale, a plaintiff has the sole power and authority to determine whether a potential tortfeasor will be severally liable or jointly and severally liable for the plaintiff's damages. In practice, a plaintiff could completely circumvent Minnesota Statute § 604.02 subd. 1 by simply suing one of potentially multiple tortfeasors. Assume a

plaintiff was injured in an accident that involved four tortfeasors, A, B, C and D. Further assume the plaintiff chose to sue tortfeasor A, and did not name B, C and D to the lawsuit and the jury allocated 1% fault to tortfeasor A and apportioned the remaining 99% fault among the remaining non-party tortfeasors. According to Minnesota Statute § 604.02 subd. 1 and the Supreme Court's holding in Staab II, tortfeasor A is severally liable and therefore only responsible to pay 1% of the jury's award. However, following the District Court's decision in this case, the plaintiff would only need to make a motion for reallocation to reallocate the "uncollectible" 99% of the jury's award attributable to the non-parties B, C, and D. Under the District Court's rationale, A would be forced to pay the remaining 99% of the award, instantaneously converting tortfeasor A's several liability to joint liability. In effect, the plaintiff would have the ability to "work-around" the effects of Minnesota Statute § 604.02 subd. 1 by simply choosing not to sue certain, minimally at fault yet solvent tortfeasors, rendering other, more at fault and perhaps less solvent tortfeasors "uncollectible." Forcing a minimally at fault, severally liable tortfeasor to pay more than its fair share via reallocation in practice causes subdivision 1 to be completely ineffective and abrogates this Court's holding in Staab II. 813 N.W.2d at 80.

The District Court's decision results in an expansion of joint liability where no such exception has previously existed. The Minnesota Courts have never held that an otherwise severally liable tortfeasor may become jointly and severally liable for an award simply because another tortfeasor was insolvent, was not a

party to the lawsuit, or was otherwise unable to pay a jury's award. Indeed, the statutory language clearly defines when a person is jointly liable, and one of those circumstances is not "when another tortfeasor cannot or will not pay their share of damages."

Curiously, the District Court's memorandum acknowledges and agrees with the decision in Eid, but inexplicably does not apply the decision in this case.

The District Court stated:

The [Appellant] cites to Eid v. Hodson for the proposition that a severally liable defendant is not subject to reallocation. [citation omitted]. That case is distinguishable. In that case, the tortfeasors against whom the claim was uncollectible were only severally liable. They were not jointly and severally liable. To have allowed reallocation would have essentially provided for a statutory extension of joint and several liability to parties who would otherwise only be severally liable for injuries.

(A. Add.-10). With all due respect to the District Court, there is simply no logical way to distinguish the current case from the factual situation present in Eid.

Here, as in Eid, the tortfeasor, the Diocese, is only severally liable to the plaintiff.

Likewise, Richard Staab, had he been a party to the action, would only have been severally liable. The imposition of reallocation in this case is indeed an extension of joint liability to parties that are otherwise severally liable. Furthermore, there is nothing in the holding of Eid or Hahn to indicate that the manner in which a party becomes severally liable is relevant for purposes of applying the reallocation statute. Prior to 2003, all parties were jointly liable regardless of their percentage of fault. There were very few and very limited circumstances

under which a party would be severally liable. Nevertheless, reallocation was found to be inapplicable to severally liable parties. There is absolutely no evidence to support a holding that the Legislature intended to change the law in this regard.

The District Court's Order has the practical effect of changing the several liability of the Diocese into joint liability for the entire jury verdict. This decision is wholly unsupported by the statutory language, and directly contrary to this Court's decision confirming the Diocese is severally liable in this instance and only obligated to pay 50% of Respondent's damages.

**III. UNDER LONGSTANDING PRECEDENT CONSTRUING MINNESOTA STATUTE § 604.02 SUBD. 2, REALLOCATION CAN ONLY OCCUR AFTER ENTRY OF JUDGMENT AND NO JUDGMENT WAS EVER ENTERED AGAINST RICHARD STAAB.**

A judgment must exist before it can be reallocated. Minn. Stat. § 604.02 subd. 2. The statute expressly contemplates that if, after entry of a judgment, a portion of that judgment is uncollectible, the other parties responsible to satisfy that judgment must collectively satisfy that obligation on proportionate basis. Id. The Minnesota Supreme Court has recognized that the "thing" to be reallocated is an uncollectible judgment.

The reallocation provision establishes the procedure by which a trial court can determine uncollectibility. A motion must be made to the court no later than one year after judgment is entered, requesting allocation. The trial court then must find that the judgment, at that time, is uncollectible.

Hosley v. Armstrong Cork Co., 383 N.W.2d 289, 294 (Minn. 1986).

In this case, there is but one judgment that was (or ever could be) entered. By direction of this Court, judgment was entered in favor of Respondent for 50% of the jury's award. (AA-014—AA-019). This judgment has been fully satisfied. There is no judgment against Richard Staab, and indeed there can be no judgment against Richard Staab as a non-party to the lawsuit. Hurr v. Davis, 193 N.W. 943, 944 (Minn. 1923) (holding that a judgment against persons not parties to the action are “clearly void for want of jurisdiction.”) The statute provides no mechanism for the entry of a new judgment to allow for reallocation. In this case, there is simply nothing to reallocate.

The O'Brien Court, in fact, acknowledged the “established proposition that when only one defendant is liable on a judgment, that defendant's share cannot be reallocated among other tortfeasors who are not subject to the judgment.” O'Brien, 823 N.W.2d at 900 citing EMC v. Dvorak, 603 N.W.2d 350, 353 (Minn. Ct. App. 1999) (the statute requires two or more liable tortfeasors for reallocation to occur); Hahn, 478 N.W.2d at 522 (noting that reallocation is only available “where there is more than one person against whom judgment can be entered.”) Although the Diocese disagrees with the O'Brien Court's overall analysis and conclusion, even the O'Brien decision, as applied to these facts, directs that reallocation is not appropriate because Richard Staab is not a party to the lawsuit and he is not subject to a judgment.

Notwithstanding, the Court of Appeals in this case held that a judgment is not necessary for reallocation. Instead, the Court of Appeals held subdivision 2 of

the joint and several liability statute applies to the “moral obligations” of tortfeasors. In reaching this holding, the Court of Appeals relied upon the use of the word “obligation” in the statute, and determined that “obligation” meant something other than the judgment that is entered in favor of a plaintiff.

The Court of Appeals cites to Hosley I for the proposition that distinctions in statutory language are presumed intentional and must be applied with consistent intent. (AA-133). In Hosley I, the Supreme Court noted that subdivision 1 of the joint and several liability statute applied to “two or more persons” whereas subdivision 2 applied to the reallocation of a “party’s” uncollectible share. 383 N.W.2d 289, 293 (Minn. 1986). Even though the statute used two different words (person/party), the Court did not simply assume that the Legislature meant two different things and end its analysis. Instead, this Court considered whether, in context and as applied, it was appropriate to read the word “party” narrowly to mean “party to the lawsuit” or broadly to mean “party to the transaction.” The Court considered the intentions of the legislature in enacting the reallocation provisions and relevant case law in determining that the broad meaning of the word “party” should be applied. Id.

The Court of Appeals purports to rely on Hosley I in support of its decision to interpret the term “obligation” broadly to mean a “legal or moral obligation” instead of interpreting the term narrowly to mean a “legal obligation.” Ironically, the Hosley I Court has already held that the “thing” to be reallocated is a judgment that has been entered. Notwithstanding this holding, the Court of

Appeals felt compelled to interpret the word “obligation” and in doing so, failed to undertake the type of analysis employed by this Court in Hosley I to determine whether a broad or narrow interpretation of the word “obligation” made sense within the context of the statute and the intentions of the Legislature.

The Legislature clearly intended to limit a severally liable defendant’s exposure to its equitable share of fault. Minn. Stat. § 604.02 subd.1 (2003). Reading the term “obligation” to mean “an obligation to pay a judgment” preserves the Legislature’s intentions. Subdivision 2 of the statute exists to address what is to be done when a portion of a judgment, that a plaintiff has a right to collect, remains “uncollectible.” Reading the term “obligation” to mean “a moral obligation” takes the statutory language out of context, and creates a statute that is no longer concerned about the payment of uncollectible judgments, but is concerned about whether a defendant should (in a moral sense) pay a judgment despite various legal defenses to liability. This interpretation is contrary to the purpose of the statute and destroys the intentions of the Legislature in amending subdivision 1 of the statute.

The Court of Appeals held its interpretation of the term “obligation” is “consistent with the Supreme Court’s recognition that its decision in Hosley clearly contemplates assignment of equitable shares of an obligation to nonparty tortfeasors.” (AA-133, citing Staab II, 813 N.W.2d at 77). This is an incorrect reading of both Staab II and Hosley I. The Court of Appeals citation to Staab II cuts off the Court’s sentence at the comma. Id. This Court in fact stated:

Our decision in Hosley clearly contemplates assignment of equitable shares of an obligation to nonparty tortfeasors, but we did not read the phrase “shall reallocate” to imply the creation of an obligation enforceable against non-parties where none would otherwise exist.

Id. [emphasis added]. In Hosley I, the Court held that all non-settling tortfeasors were jointly liable for the jury’s award pursuant to the language of Minnesota Statute §604.02 subd. 1 in effect at the time of the decision. 383 N.W.2d at 292. Pittsburgh-Corning was jointly liable and thus subject to reallocation. As a jointly liable defendant, Pittsburgh-Corning was responsible to pay a maximum of 100% of the jury’s award, including amounts attributable to Johns-Mansville, a non-party. Pittsburgh-Corning’s obligation to pay 100% could be reduced, however, if and when the uncollectible amounts were reallocated between Pittsburgh-Corning and Hosley, as an at-fault Plaintiff. Id. The difference between this case and Hosley I is the Court in Hosley I did not have to create a judgment-like obligation to reallocate to Pittsburgh-Corning, because a judgment for 100% of the jury’s award already existed, had been entered, and was enforceable against the defendants, thus Pittsburgh-Corning was jointly liable for that judgment.

Here, the Diocese was subject to a judgment for its own fault and was not subject to any judgment for the fault of Richard Staab. Staab II, 813 N.W.2d at 80; (AA-040). There was indeed no judgment entered for the fault of Richard Staab. As this Court observed in Staab II, reallocation of damages attributable to Richard Staab’s fault would require the entry of a judgment against Richard

Staab – or the “creation of an obligation enforceable against a non-party where none would otherwise exist.” Staab, 813 N.W.2d at 77; (AA-033). This Court did not read the decision in Hosley I or the language of the reallocation statute to allow for the entry and reallocation of a judgment against a non-party. Id.

The Court of Appeals’ broad reading of the statutory language and subsequent reallocation of Richard Staab’s “moral obligation” to the Diocese creates a right for a plaintiff to collect damages where there is no statutory or common law right to collect. Minnesota Statute § 604.02 subd. 1 expressly provides that Respondent has no right to collect from the Diocese in excess of its equitable share. The Court of Appeals’ interpretation of the statutory language of subdivision 2 is contrary to the plain language of the statute, the legislative intent of the statute and case law interpreting the statute, and should be rejected in favor of the well-settled interpretation of the statute which requires the existence of a judgment before reallocation can occur.

#### **IV. LONGSTANDING PRECEDENT DOES NOT ALLOW FOR REALLOCATION OF AN AWARD FOR WHICH THERE WAS NEVER A LEGAL RIGHT TO COLLECT.**

Not only does the statutory language expressly state that the reallocation provisions only apply to judgments, but the Minnesota appellate courts have held that the very concept of “uncollectibility” presumes the right to collect in the first instance. Where a person found by a jury to be at fault for causing a plaintiff’s injuries is not a party to the lawsuit, the trial court cannot determine whether a claim is collectable against that party because there is no legal right to collect

until judgment has been entered. Hosley II, 401 N.W.2d at 140. Common law further dictates there is no right to collect a judgment from a non-party, and all such awards are void. Hurr v. Davis, 193 N.W. 943, 944 (Minn. 1923).

Following the stay of plaintiff Hosley's proportionate share of the portion of the judgment attributable to Johns-Mansville, the matter was remanded to the District Court. Hosley II, 401 N.W.2d at 138. Pittsburgh-Corning attempted to prove the Johns-Mansville portion of the judgment was uncollectible, thus relieving Pittsburgh-Corning from having to pay plaintiff Hosley's reallocated share of the judgment in the amount of \$75,833.33. Hosley opposed the motion, and attempted to force Pittsburgh-Corning to pay 100% of the Johns-Mansville share in accordance with Pittsburgh-Corning's obligations as a jointly liable defendant. Id. The trial court held the determination of whether the judgment against Johns-Mansville was uncollectible was premature because Johns-Mansville was not a party to the suit and thus not subject to a judgment, and because there was no evidence that collection against Johns-Mansville would be futile. Id. [emphasis added].

The Court of Appeals affirmed the decision of the District Court, holding that implicit in the statutory term "uncollectibility" is the right to collect. Id. at 140. The reallocation provision indeed speaks of a tortfeasor's "obligation" and its "continuing liability." Id. at 139-140. The Court held it is "difficult to envision any occasion to determine uncollectibility before a legal obligation is established." Id.

The Court of Appeals in this case attempts to distinguish the present situation from Hosley II, relying on the Court's second reason for denying the request for a finding of uncollectibility, namely that the finding was premature given the pendency of the bankruptcy proceedings. (AA-136–AA-137). The Court of Appeals in this matter held that because the statute of limitations has run against her husband, Ms. Staab no longer has a right to collect against him and therefore the determination on uncollectibility is not premature.<sup>3</sup> (AA-136–AA-137). However, the Hosley II decision is clear that the Court determined that a finding of uncollectibility required both a determination that there was a right to collect in the first instance and a finding that the party owing the money could not pay. Id. Even if we assume that Richard Staab does not have the financial wherewithal to pay in accordance with his fault (which was only an assumption), the first requirement of uncollectibility, namely the legal right to collect, remains unsatisfied.

The holding in Hosley II was affirmed by this Court in Schneider v. Buckman, 433 N.W.2d 98 (Minn. 1988) (superseded by statute as recognized in Staab II, 813 N.W.2d 68 (Minn. 2012)). In Schneider, four tortfeasors were found responsible for the plaintiff's injuries. Id. at 99. Two tortfeasors were never joined as parties to the suit, and one tortfeasor was dismissed as a matter of law. Id. The

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<sup>3</sup> Appellants are not aware of a single case in which “uncollectibility” was created by a plaintiff's failure to sue an at-fault party. A plaintiff's failure to sue an at-fault party within the statute of limitations results in the plaintiff's inability to seek damages against that party in the first place.

only remaining tortfeasor was defendant Buckman. Id. Buckman, although only 35% at fault, was jointly liable for 100% of the jury's award pursuant to the then-existing version of Minnesota Statute § 604.02 subdivision 1, which imposed joint liability on all tortfeasors. Id. at 102. Plaintiff Schneider and defendant Buckman sought an appeal over whether the portion of the judgment attributable to the other tortfeasors was "uncollectible." Id.

This Court held that there was no need to determine whether any portion of the judgment was uncollectible because the reallocation statute simply did not apply when there was but one defendant against whom the judgment can or has been entered. Id. Stated otherwise, where there are no other parties responsible for a judgment, there can be no reallocation. See (AA-141–AA-142; Court of Appeals dissent).

The plain language of Minnesota Statute § 604.02 and three decades of Minnesota case law directs that reallocation can only occur where a portion of a judgment is uncollectible. When faced with a motion for reallocation, Minnesota Statute § 604.02 requires the District Court to first and foremost make a determination as to whether any amount of the judgment remains unpaid. Here, in accordance with the Supreme Court's directive, one judgment has been or ever could be entered in favor of Respondent and that judgment has been paid in full. (A. Add.-03, A. Add.-12). There was never, and never could be, a judgment entered for 100% of the jury award and there was never a judgment entered

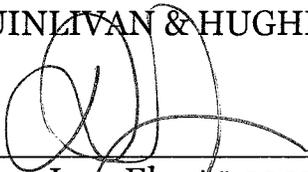
against Richard Staab. Accordingly, there was no “uncollectible” judgment to be reallocated.

**CONCLUSION**

The Diocese, as a severally liable defendant, is responsible only to pay its equitable share of the jury’s award and is not subject to reallocation. Staab v. Diocese of St. Cloud, 813 N.W.2d 68 (Minn. 2012); Eid v. Hodson, 521 N.W.2d 862 (Minn. Ct. App. 1994). Richard Staab is not a party to this case. There is no judgment against Richard Staab, and therefore no right to collect any amounts from him. Simply stated, there is no “uncollectible judgment” and there is nothing to be reallocated pursuant to Minnesota Statute §604.02 subd. 2. For these reasons, and the reasons stated herein, Appellant Diocese of St. Cloud respectfully requests the decisions of the Court of Appeals and the District Court be reversed.

QUINLIVAN & HUGHES, P.A.

Dated: 7/24/13

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