

No. A12-1575 and A12-1972

STATE OF MINNESOTA

IN COURT OF APPEALS

Alice Staab,

Respondent,

vs.

Diocese of St. Cloud,

Appellant,

**APPELLANT / CROSS-RESPONDENT'S RESPONSE AND REPLY
BRIEF AND ADDENDUM**

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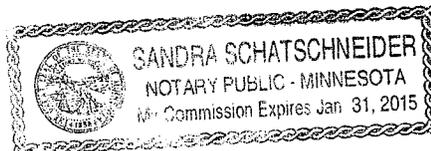
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RESPONDENT/APPELLANT STAAB'S STATEMENT OF THE LEGAL ISSUES

- I. Did the trial court correctly order reallocation of Richard Staab's equitable share of the obligation?

The trial court held: that reallocation of Richard Staab's equitable share of the obligation was appropriate under Minn. Stat. § 604.02, Subd. 2 (1978).

List of most apposite cases:

Staab v. Diocese of St. Cloud, 813 N.W.2d 68 (Minn. 2012)
Hosley v. Armstrong Cork Co., 383 N.W.2d 289, 293 (Minn. 1986)

List of most apposite constitutional and statutory provisions:

Minn. Stat. § 604.02, Subd. 2 (1978)
Minn. Stat. § 604.02, Subd. 1 (2003)

- II. In determining Richard Staab's equitable share of the obligation for purposes of reallocation did the trial court err in failing to include interest from March 25, 2009 through August 7, 2012?

The trial court held: Instead of determining the full amount of Richard Staab's equitable share of the obligation as of August 7, 2012 for purposes of reallocation, the trial court ruled that it would be "inequitable" to obligate the Diocese to pay "post-verdict interest" before the Diocese's obligation to pay the reallocated amount "arose."

List of most apposite cases:

Lienhard v. State, 431 N.W.2d 861, 865 (Minn. 1988)

List of most apposite constitutional and statutory provisions:

Minn. Stat. § 604.02, Subd. 2 (1978)
Minn. Stat. § 549.09, Subd. 1(c)(2) (2010)

**RESPONDENT/APPELLANT STAAB'S STATEMENT OF THE CASE AND
THE FACTS**

RESPONDENT/APPELLANT STAAB'S STATEMENT OF THE CASE

The trial court in this case is the Stearns County District Court, Seventh Judicial District, the Honorable John H. Scherer presiding.

Respondent/Appellant Alice Ann Staab [Mrs. Staab] sued Appellant/Respondent Diocese of St. Cloud [the Diocese] for damages for injuries that occurred on April 9, 2005. Following trial, on March 25, 2009 a jury by its verdict found the Diocese 50% at fault and Mrs. Staab's husband, Richard Staab [not a party to the lawsuit], 50% at fault for Mrs. Staab's injuries.

The trial court ruled that the Diocese was responsible for 100% of Mrs. Staab's damages. The Diocese appealed and the Court of Appeals reversed the trial court, holding that the Diocese was only liable for 50% of Mrs. Staab's damages. Mrs. Staab then moved the trial court for reallocation of Richard Staab's equitable share of the judgment pursuant to Minn. Stat. § 604.02, Subd. 2. By the time of the hearing on the motion for reallocation, the Supreme Court had accepted review of the case, so the trial court took the reallocation motion under advisement pending a decision from the Supreme Court.

The Supreme Court affirmed the Court of Appeals. The trial court then heard the reallocation motion and granted that motion on August 8, 2012. On September 24, 2012, the trial court ordered entry of judgment in favor of Mrs.

Staab and against the Diocese for \$128,584.44 [1/2 of the jury's original 3.25.2009 damage award of \$224,200.70, \$112,100.35, plus pre-verdict interest of \$15,009.89, plus "post-verdict interest," from August 7, 2012 through September 24, 2012, of \$1,474.20].

The Diocese has appealed from the trial court's order granting the reallocation motion. Mrs. Staab has appealed from the trial court's failure to include interest on the reallocated amount for the period of March 25, 2009 through August 7, 2012.

RESPONDENT/APPELLANT STAAB'S STATEMENT OF FACTS

Respondent/Appellant Alice Ann Staab [Mrs. Staab] initially brought this lawsuit against Holy Cross Parish to obtain compensation for injuries from a fall at the parish on April 9, 2005. Just before trial of the lawsuit began, Mrs. Staab moved to amend the caption to name Appellant/Respondent Diocese of St. Cloud [the Diocese], which owns and operates Holy Cross Parish, as the defendant instead of Holy Cross Parish. The Diocese did not object to the motion and it was granted.

Following trial a jury by its verdict on March 25, 2009 found both the Diocese and Richard Staab negligent and a cause of Mrs. Staab's injury; and the jury assigned 50% fault to the Diocese and 50% fault to Richard Staab. Richard Staab is Mrs. Staab's husband and is not a party to this lawsuit.

The Diocese moved the trial court for an order amending its findings and judgment to provide that the Diocese is only liable for 50% of the damages found by the jury. The trial court denied this motion. On May 20, 2009, the trial court ordered that judgment be entered in favor of Mrs. Staab and against the Diocese for the full amount of the damages found by the jury, \$224,200.70, plus pre-verdict interest, costs and disbursements; the total amount of the judgment entered in Mrs. Staab's favor was \$262,090.01 as of March 25, 2009 [\$224,200.70 + \$30,019.78 (pre-verdict interest) + \$7,869.53 (costs and disbursements)].

The Diocese appealed from the trial court's ruling that the Diocese is liable for 100% of Mrs. Staab's damages. Consistent with the Diocese's argument that it is only liable for 50% of Mrs. Staab's damages, at about the same time that it appealed the Diocese paid the portion of the March 25, 2009 judgment representing half of Mrs. Staab's damages, plus some interest, plus costs and disbursements.

On July 30, 2009, the Diocese paid \$135,973.38 toward the March 25, 2009 judgment. After the July 30, 2009 payment, the unpaid amount of the 3.25.2009 judgment, as of 7.30.09, was \$129,764.35 [interest (at 4%) on the original March 25, 2009 judgment of \$262,090.01, from March 25, 2009 through July 30, 2009, was \$3,647.72; $\$262,090.01 + \$3,647.72 = \$265,737.73$; $\$265,737.73 - \$135,973.38 = \$129,764.35$].

The Court of Appeals reversed the trial court, holding that the Diocese is only liable for 50% of the jury verdict. *Staab v. Diocese of St. Cloud*, 780 N.W.2d 392 (Minn. App. 2010). On review, the Supreme Court affirmed the Court of Appeals, although on different grounds. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68 (Minn. 2012). The Supreme Court held that the liability of “parties to the transaction” [in this case, the Diocese and Richard Staab] attached at the time of the incident; but given the percentage of fault found against the Diocese the amount collectible from the Diocese as a named party defendant is limited by Minn. Stat. § 604.02, Subd. 1 to the Diocese’s percentage of fault as assigned by the jury.

In April, 2010, after the Court of Appeals’ decision and before the Supreme Court granted Mrs. Staab’s petition for review, Mrs. Staab moved the trial court for reallocation of Richard Staab’s equitable share of the judgment pursuant to Minn. Stat. § 604.02, Subd. 2. This motion was taken under advisement pending a decision from the Supreme Court.

After the Supreme Court’s decision, Mrs. Staab’s motion for reallocation was heard by the trial court on June 7, 2012. Mrs. Staab sought reallocation in the amount of \$166,814.57 as of June 7, 2012, representing the amount of the unpaid judgment as of July 30, 2009, \$129,764.35, plus interest from July 30, 2009 through June 7, 2012 at 10% [pursuant to Minn. Stat. § 549.09, Subd. 1(c)(2) (2010)].

By order and judgment dated August 8, 2012, the trial court granted Mrs. Staab's motion for reallocation but wrote in a footnote that the amount of the judgment would be amended upon verification of the amount the Diocese had already paid to Mrs. Staab. By Order for Amended Judgment dated September 24, 2012, the trial court ordered that an amended judgment be entered in favor of Mrs. Staab and against the Diocese for the amount of \$128,584.44.

The Diocese is appealing from the trial court's order granting reallocation. Mrs. Staab is appealing from the trial court's order refusing to include interest on the amount to be reallocated from March 25, 2009 through August 7, 2012.

RESPONDENT/APPELLANT STAAB'S ARGUMENT

Scope of Review/Standard of Review

Respondent/Appellant Alice Ann Staab [Mrs. Staab] concurs with the Standard of Review stated at page 5 of Appellant/Respondent Diocese's Brief.

I. The trial court correctly ordered reallocation of Richard Staab's equitable share of the obligation.

I.A. As parties to the transaction who were found at fault by the jury, Richard Staab and the Diocese are each severally liable for the judgment pursuant to Minn. Stat. § 604.02, Subd. 1.

In *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68 (Minn. 2012), the Minnesota Supreme Court explained that

...Under Minnesota common law, "persons are ...liable" at the instant those persons' acts cause injury to a victim. Applying the common law, a

tortfeasor's liability *exists* prior to and independent of any claim or civil action that arises from that liability; hence a judgment on a plaintiff's cause of action in tort in a civil action *enforces* that liability only against the defendant or defendants who are parties to the civil action. Moreover, the language of section 604.02 provides no clear indication that it modifies the common law rule regarding the time of creation of tort liability. Subdivision 1 therefore cannot be read to indicate that "persons are...liable" as a result of the jury's apportionment of fault because those "persons" are *already* liable at the time the tort was committed. *Id.*, at 73-74.

* * *

...A tortfeasor is "severally liable," however, when that person's liability is separate from another person's liability so that an injured person may bring an action against one defendant without joining the other liable person. Pursuant to the common law rules of joint and several liability and several liability, a plaintiff may sue fewer than all of the tortfeasors who caused the harm. But the difference between the two rules 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.

More importantly, the common law provides that "two or more persons are severally liable" at the instant multiple tortfeasors commit an act that causes a single, indivisible injury to a plaintiff [footnote and cited authority omitted]. *Id.*, at 74.

The Supreme Court in *Staab* also noted that "...several liability is a component of joint and several liability. It is not logically possible for a tortfeasor to be jointly and severally liable without being severally liable..." *Id.*, at 75, *footnote 3*.

So at common law, at the instant when a tort is committed, those tortfeasors whose concurrent negligence caused the injury are *both* "jointly and severally liable" and "severally liable." In this case, the jury by its verdict found that the Diocese and Richard *Staab* are "tortfeasors whose concurrent negligence" caused Mrs. *Staab's* injury. Therefore, under Minnesota common

law the Diocese and Richard Staab were *both* “jointly and severally liable” and “severally liable” at the instant that the tort was committed.

The Supreme Court in *Staab* also explained that its intent was to carefully examine the express wording of § 604.02 to “determine the nature and extent to which the statute modifies the common law”:

Generally, statutes in derogation of the common law are strictly construed. *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 327 (Minn. 2004). Therefore, we presume that statutes are consistent with the common law, *In re Shetsky*, 23,9 Minn. 463, 60 N.W.2d 40, 45 (1953), and do not presume that the Legislature intends to abrogate or modify a common law rule except to the extent expressly declared or clearly indicated in the statute, *Do v. Am. Family Mut. Ins. Co.*, 779 N.W.2d 853, 858 (Minn. 2010). It is undisputed that Minn. Stat. § 604.02 was intended to modify the common law rule of joint and several liability in Minnesota. Thus, we must carefully examine the express wording of the statute to determine the nature and extent to which the statute modifies the common law. *See id. Id., at 73.*

In addition to explaining how the common law applies to two tortfeasors like the Diocese and Richard Staab from the time of the tort, and how common law principles will only be modified by § 604.02 to the extent clearly intended by the legislature, the Supreme Court in *Staab* also noted that the term “party” in § 604.02, subd. 2, and the term “persons” in § 604.02, subd. 1, *both* mean “all parties to the tort” or “all parties to the transaction giving rise to the cause of action” rather than just named parties in the lawsuit:

...Previously we have determined that the word “party” in subdivision 2 includes all parties to the transaction giving rise to the cause of action. *Hosley v. Armstrong Cork Co.*, 383 N.W.2d 289, 293 (Minn. 1986). Because “party” in subdivision 2 means all persons who are parties to the tort, regardless of whether they are named in the lawsuit, it logically follows

that “persons” in subdivision 1 must also mean all parties to the tort. 813 N.W.2d at 76.

What this means here is that Richard Staab, though not a “party” to the lawsuit, is both a “person” for purposes of subdivision 1 and a “party” for purposes of subdivision 2.

Tying it all together, the Supreme Court in *Staab* explained that BOTH subdivisions 1 and 2 of § 604.02 apply to BOTH the Diocese and Richard Staab:

...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 nonparties where none would otherwise exist. Rather, we interpreted the statute to govern the extent of equitable shares apportioned to each party to the transaction. *Hosley*, 383 N.W.2d at 293. We therefore conclude that section 604.02 applies whenever multiple tortfeasors act to cause an indivisible harm to a victim, regardless of how many of those tortfeasors are named as parties in a lawsuit arising from that tort. 813 N.W.2d at 77.

Certainly the effect of subdivision 1, as explained by the Supreme Court in *Staab, supra*, is that—for purposes of subdivision 1—the Diocese and Richard Staab are “severally liable” only, and NOT “jointly and severally” liable.” But the Supreme Court in *Staab* also stated that [1] subdivision 2 of § 604.02 applies to both the Diocese and Richard Staab; and [2] except for how it is clearly modified by the statutory language of § 604.02, Subd. 2, the common law relating to the joint and several liability of tortfeasors still applies to both the Diocese and Richard Staab.

I.B. Minn. Stat. § 604.02, Subd. 2, requires that any obligation owed under subdivision 1 and determined by the trial court to be uncollectible must be reallocated to the other at-fault parties.

This statement from the Supreme Court in *Staab, supra*, previously noted, warrants repeating:

We therefore conclude that section 604.02 applies whenever multiple tortfeasors act to cause an indivisible harm to a victim, regardless of how many of those tortfeasors are named as parties in a lawsuit arising from that tort. 813 N.W.2d at 77.

§ 604.02—including, specifically, subdivision 2—applies to both the Diocese and Richard Staab because they are tortfeasors whose acts caused an indivisible harm to a victim [Mrs. Staab].

If at common law the Diocese and Richard Staab became both “severally liable” and “jointly and severally liable” at the instant when the tort occurred; and if, as was noted by the Supreme Court in *Staab*, subdivision 2 of § 604.02 does NOT change common law principles except as expressly stated, then the Diocese and Richard Staab remain “jointly and severally liable” for purposes of subdivision 2 unless the statute clearly states something which changes this.

Minn. Stat. § 604.02, Subd. 2, titled “Reallocation of uncollectible amounts generally,” states in full:

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.

In both *Staab, supra*, and *Hosley, supra*, the Supreme Court wrote that the word “party” in this statute refers to “all parties to the tort” or “all parties to the transaction giving rise to the cause of action” rather than just named parties in the lawsuit [and, again, as noted herein above, the Supreme Court in *Staab* expressly stated that BOTH subdivisions 1 and 2 apply to all “parties to the transaction” (all persons whose fault has been submitted to the jury) rather than just parties named in the lawsuit].

The statute clearly states that “a party’s equitable share of the obligation,” if “uncollectible” from that party, *shall* be reallocated “among the other parties, including a claimant at fault, according to their respective percentages of fault.” Applied to this case, Richard Staab’s “equitable share of the obligation,” if uncollectible from him, *shall* be reallocated among the other parties “according to their respective percentages of fault.” Because the claimant, Mrs. Staab, was not at fault, Richard Staab’s “equitable share,” if uncollectible from him, *shall* be reallocated to the only other party at fault, the Diocese.

The trial court in this case observed that

Even if the Defendant [the Diocese] is correct in arguing that subdivision 1 essentially destroys joint and several liability and leaves the Defendant only severally liable, that does not render the reallocation provisions of subdivision 2 ineffective. Subdivision 2 is not limited to parties who are jointly and severally liable. Subdivision 2 applies to “parties,” and the Supreme Court specifically noted that a party, as the term is used in subdivision 2, applies to a party to the transaction, whether or not named in the lawsuit. *Staab*, 813 N.W.2d at 76; see also *Hosley v. Armstrong Cork Co.*, 383 N.W.2d 289, 293 (Minn. 1986). “Party” refers to the tortfeasor whose equitable share of the obligation is uncollectible as well as the other tortfeasors and claimant at fault. The statute does not

limit reallocation to parties who are jointly and severally liable or parties who fall within one of the four exceptions identified in subdivision 1. *Trial Court Memorandum accompanying 8.8.2012 Order Granting Motion for Reallocation, the Diocese's Addendum, A. Add.-08-09.*

I.C. The Diocese agreed that Richard Staab's obligation is uncollectible.

In this case, within one year after the March 25, 2009 judgment was entered, Mrs. Staab moved the trial court for reallocation of Richard Staab's equitable share of the judgment. In response to the motion, the Diocese agreed that Richard Staab's equitable share of the obligation was uncollectible.

The Diocese now argues that even though it does not dispute that "Richard Staab is insolvent and does not have the financial means to pay a judgment," the Diocese has *not* stipulated "that Richard Staab's equitable share of the jury's award is 'uncollectible.'" See *Appellant Diocese's Brief, p. 10, footnote 2*. But the trial court wrote:

When this issue [reallocation] was argued, both parties conceded for sake of argument that the percentage of damages attributable to Richard Staab would be deemed uncollectible, as the term is used in subdivision 2. *Trial Court Memorandum accompanying 8.8.2012 Order Granting Motion for Reallocation, the Diocese's Addendum, A. Add.-05.*

Mrs. Staab notes that the Minnesota Supreme Court has declared that the Minnesota appellate courts will not consider an argument not raised or decided in district court. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

I.D. Richard Staab's uncollectible obligation was properly reallocated to the Diocese as the only other at-fault party.

The Diocese complains that the trial court's interpretation of subdivision 2 essentially renders subdivision 1 as having no effect. In response to this the trial court wrote that "[T]his argument asks the Court to ignore the language of subdivision 2 and conclude that the Legislature erred in failing to rescind or limit subdivision 2 when enacting the 2003 amendment to subdivision 1. The Court is unaware of any legislative history or case law to support this proposition." *Trial Court Memorandum accompanying August 8, 2012 Order Granting Motion for Reallocation, the Diocese's Addendum, A. Add.-09.*

The trial court also wrote that:

... subdivision 1 does not replace joint and several liability with several liability. Rather, subdivision 1 [in many cases, including this one] limits recovery against that party to its percentage of fault unless and until reallocation is ordered. *August 8, 2012 Trial Court Memo., A. Add.-08.*

* * *

Although in this particular fact situation the application of subdivision 2 may render subdivision 1 ineffective, that would not necessarily be the case under different facts. For instance, if Plaintiff [Mrs. Staab] had been found 20% at fault and Defendant [the Diocese] and Richard Staab each 40% at fault, then the reallocation statute would require Plaintiff to assume a proportionate amount of Richard Staab's fault, thereby softening the impact of common law joint and several liability on the Defendant. *Id., A. Add.-09.*

The Diocese argues that requiring them to pay more than 50% of the damages in this case isn't fair [the Diocese's Brief, 23], but as Justice Meyer noted in her dissent in *Staab, supra*,

"...this [requiring a defendant who is less than 100% at fault to pay the entire award] has been the common law rule in Minnesota for over a

century. [Cited authority omitted]. The common law places the interests of an innocent plaintiff above the interests of an at-fault tortfeasor.” [Cited authority omitted]. *Staab*, 813 N.W.2d at 85.

In this case, § 604.02, Subd. 2 *required* the trial court to reallocate Richard Staab’s equitable share of the obligation to the only other at-fault party, the Diocese. As the trial court noted, if there had been other at-fault parties, such parties would have shared the burden of reallocation with the Diocese.

I.E. Earlier appellate decisions must be viewed in light of the fact that Minn. Stat. § 604.02, Subd. 1 has been amended in recent years and has now been interpreted by the Supreme Court in *Staab v. Diocese of St. Cloud*.

In *Newinski v. John Crane, Inc.*, A08-1715, 2009 WL 1752011 (Minn. App. 2009) (unpublished) (AA-127), the Court of Appeals denied reallocation because, citing *Schneider v. Buckman*, 433 N.W.2d 98, 102-03 (Minn. 1988) it noted that the jury’s determination of partial fault against the only defendant “is of no practical consequence when there are no other defendants against whom judgment can be entered.” *Newinski*, at 17, AA-134. Because of this assessment of the effect of partial fault found against a sole party, the *Newinski* court also wrote that “the supreme court has held that the reallocation procedures of section 604.02 are not implicated where there is but one defendant against whom judgment can be entered” [citing *Schneider*, 433 N.W.2d at 103].

Citing *Schneider*, the *Newinski* court ruled that where there was only one named defendant even though that defendant was found less than 100% at fault

that defendant is liable for the entire damage award [minus portions of fault corresponding to Pierringer-released parties]. If this *Schneider/Newinski* logic was still valid then in this case the Diocese would be liable for the full damage award in Mrs. Staab's favor *under Minn. Stat. § 604.02, Subd. 1*. But, contrary to assertions by the courts in both *Schneider* and *Newinski*, the Court in *Staab* ruled that a jury's determination of partial fault against an only defendant *is* of practical consequence when there are no other defendants against whom judgment can be entered.

Because a jury's determination of partial fault against the only defendant now *is* of practical consequence, the reasons that reallocation wasn't addressed in *Schneider* and *Newinski* are inapplicable here.

The Diocese cites *Eid v. Hodson*, 521 N.W.2d 862 (Minn. App. 1994) as "unequivocally" establishing "that the reallocation provisions of the joint and several liability statute do not apply where there is no joint liability." *The Diocese's Brief*, 11. *Eid*, though, was based upon a very different fact situation and a different statute. When *Eid* was decided in 1994, Minn. Stat. § 604.02, Subd. 1 read

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... 521 N.W.2d at 864.

In *Eid*, the two parties were not “jointly and severally” liable as required for reallocation—they were, clearly, only “severally liable.” The trial court in this case wrote that in *Eid*

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. *August 8, 2012 Trial Court Memo., A. Add.-10.*

Unlike the parties in *Eid*, in the present case, though the Diocese *is not* “jointly and severally” liable with Richard Staab under Minn. Stat. § 604.02, Subd. 1, the Diocese *is* “jointly and severally” liable with Richard Staab, both at common law and under Minn. Stat. § 604.02, Subd. 2. The Diocese’s confusion stems from its failure to acknowledge the difference between subdivisions 1 and 2 of § 604.02 and the fact that two parties may be only severally liable for purposes of subdivision 1 while being jointly and severally liable at common law and for purposes of subdivision 2.

The Diocese argues that the Court of Appeals in *Hosley v. Pittsburgh Corning Corp.*, 401 N.W.2d 136, 140 (Minn. App. 1987) ruled that for purposes of § 604.02, Subd. 2 an obligation cannot be “uncollectible” from a “party” unless that obligation has been first reduced to a judgment against that “party.” *Diocese’s Brief, p. 9-10.* But *Hosley* is distinguishable.

Actually, there have been three “*Hosley*” decisions from the Minnesota appellate courts: *Hosley v. Armstrong Cork Co.*, 364 N.W.2d 813 (Minn. App. 1985) [*Hosley I*]; *Hosley v. Armstrong Cork Co.*, 383 N.W.2d 289 (Minn. 1986)

[*Hosley II*]; and *Hosley v. Pittsburgh Corning Corp.*, 401 N.W.2d 136, 140 (Minn. App. 1987) [*Hosley III*].

In *Hosley II* the Supreme Court reversed the Court of Appeals' holding that the reallocation provision of Minn. Stat. § 604.02, Subd. 2 (1984) was inapplicable in the case. The Supreme Court wrote that "[T]he word "party" in the reallocation statute need not, however, be limited to the restrictive definition "a party to a lawsuit," but instead can be more broadly defined as "a person whose fault has been submitted to the jury," or, in other words, "parties to the transaction... 383 N.W.2d at 293. The Supreme Court then noted that Minnesota courts can calculate the reallocation of the fault assigned to a "party to the transaction," like Johns-Manville in *Hosley*. *Id.*

Pittsburgh Corning argued in *Hosley II* that the Supreme Court should also address the issue of whether Johns-Manville's share was uncollectible within the meaning of § 604.02, Subd. 2. The Supreme Court wrote that "[S]uch a determination, however, would be premature." 383 N.W.2d at 294. The Court noted that the reallocation statute

"...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. Minn. Stat. Sec. 604.02, subd. 2. Neither of these prerequisites was followed in this case. Thus, it would be inappropriate for us to rule on whether Johns-Manville's obligation was uncollectible. No motions for reallocation were presented; no findings by the trial court were made." 383 N.W.2d at 294.

After the Supreme Court's decision in *Hosley II*, Pittsburgh Corning moved the trial court for a determination that the Johns-Manville portion of liability was uncollectible. The trial court ruled that the issue was prematurely presented, for two reasons: First, Johns-Manville was not a party to the suit and a judgment for damages had not yet been entered against it. Second, there was no current credible evidence showing creditors' remedies against Johns-Manville would be futile. In *Hosley III*, the Court of Appeals affirmed the trial court's ruling that "it was *presently premature* to determine whether Johns-Manville's obligation was uncollectible where Johns-Manville was not a party to the litigation." [*Emphasis added*]. 401 N.W.2d at 140.

The present case is easily distinguishable from the *Hosley* trio. In *Hosley*, Johns-Manville once was a party to the lawsuit but the claim against it was severed after Johns-Manville filed for bankruptcy. In this case, Richard Staab *never* was a party to the case. Richard Staab's fault was submitted to the jury at the request of the Diocese. It was appropriate to consider Richard Staab's fault as a "party to the transaction" and, as the Supreme Court noted in *Hosley II*, it is also appropriate to reallocate Richard Staab's fault as a "party to the transaction."

Unlike *Hosley III*, the motion for reallocation in this case was not premature. There was no need to wait here to see what might happen with claims against Richard Staab in a bankruptcy court. To the contrary, the uncollectibility of Richard Staab's "equitable share" in this case has never been in

doubt—it was conceded in the trial court and found by the trial court as a matter of record.

The Diocese’s argument, that the obligation of Richard Staab cannot be reallocated until he has been made a party and there has been a judgment entered against him, is expressly contradicted by the very recent explanation from the Supreme Court that

...section 604.02 applies whenever multiple tortfeasors act to cause an indivisible harm to a victim, regardless of how many of those tortfeasors are named as parties in a lawsuit arising from the tort. *Staab*, 813 N.W.2d at 77.

I.F. The Diocese’s present complaint stems from its own decision to NOT name Richard Staab as a party but still ask that his fault be determined by the jury.

The Diocese argues that “Under the District Court’s rationale...a plaintiff could completely circumvent the application and effects of Minnesota Statute § 604.02 Subd. 1 by simply suing one of potentially multiple tortfeasors.” See *Appellant Diocese’s Brief*, p. 15. What that means in this case is that the Diocese contends that Mrs. Staab should be legally obligated to sue her husband—even though she doesn’t think he was at fault! [And it should be noted that the finding of Richard Staab’s fault was made in this case without allowing him the benefits of due process and advocacy].

But as Justice Meyer wrote in her dissent in *Staab*, *supra*,

...the Diocese acknowledges that a defendant typically would have some recourse in this situation: the “right to bring a third-party claim against any

other persons who may have contributed to a plaintiff's injuries." *Staab, supra*, 813 N.W.2d at 85.

First the Diocese chose to *not* add Richard Staab to the lawsuit as a third-party defendant. Then the Diocese chose to ask the trial court to include the issue of Richard Staab's fault on the verdict form even though the Diocese knew that any share of the judgment attributed to Richard Staab would be uncollectible from him as a non-party. The Diocese in this case is "hoist by its own petard."

In spite of the Diocese's being a victim of its own machinations, it boldly asked the trial court to completely ignore the requirements of Minn. Stat. § 604.02 Subd. 2. The trial court declined. The Court of Appeals should, too.

II. In determining Richard Staab's equitable share of the obligation for purposes of reallocation the trial court erred in failing to include interest from March 25, 2009 through August 7, 2012.

In determining the amount to be reallocated, the trial court first noted that its original order required the Diocese to pay 100% of Mrs. Staab's damages. *See [Trial Court's] Memorandum accompanying 9.24.2012 Order for Amended Judgment, p. 3, Staab's Addendum, Add. 3.* The court wrote that "the original order for judgment was error in light of the Supreme Court's decision," and the court viewed the Supreme Court's decision as "relieving Defendant [the Diocese] of any obligation to pay Mr. Staab's share of fault. *Id., at Add. 3.* The trial court then concluded that the Diocese's "responsibility for Mr. Staab's share of fault did

not arise until reallocation, in which the Court determined that it [Mr. Staab's share] was uncollectible and therefore subject to reallocation." *Id.*, at *Add. 3-4*.

The trial court then declared that "[R]eallocation does not relate back to the date of the original jury verdict." *Id.*, at *Add. 4*. This is where the trial court got off track. The trial court cited no source for this statement and gave no explanation for the logic behind it. But following this statement, the trial court launched into an analysis of pre-verdict and post-verdict interest, declared the interest on the original verdict from the time of that verdict through the time of the order for reallocation as "post-verdict interest," and declared that "[T]o assess post-verdict interest before the responsibility for the award arises would be an inequitable result that the Court cannot impose." *Id.*, at *Add. 4*.

The trial court's concern about the equitable amount for the Diocese to pay as reallocated damages wholly ignores the equitable amount for Mrs. Staab to receive. But, more importantly, the trial court's approach ignores the explicit provisions of the reallocation statute.

The trial court wrote that

The purpose of post-verdict interest is not the same as pre-verdict interest. Pre-verdict interest is an "element of damages awarded to provide full compensation by converting time-of-demand...damages into time-of-verdict damages." *Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988). Post-verdict interest, on the other hand, is intended to provide full compensation for the loss of use of money to which a prevailing party is entitled as a result of the nonpayment of a liquidated sum. *Id.*, at *Add. 4*.

This is an oversimplification. First, interest in this context is an amount of money to compensate for a loss of the use of money over a period of time. The definition in Black's Law Dictionary [Sixth Edition, 1990], of "Interest" "For use of money" is that "Interest is the compensation allowed by law or fixed by the parties for the use or forbearance of borrowed money." [Citing *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390, 565 P.2d 597, 604]. Thus, for example, if person A was supposed to receive \$1,000 on day 1 but didn't receive it until day 30, additional money paid as "interest" would compensate person A for not having the money for 29 days.

As the Supreme Court explained in *Lienhard*, "[T]raditionally, pre-verdict interest was not allowed on an unliquidated claim such as a claim for personal injuries." 431 N.W.2d at 865. If a plaintiff was injured on January 1, 2012 and a jury awarded damages of \$1,000 for the injury on July 1, 2012 no interest was added on because the law assumed that the jury included interest because the jury clearly intended that plaintiff's compensation should be \$1,000 *as of* July 1, 2012.

The Court in *Lienhard* also noted that if,

...however, "damages were readily ascertainable by computation or reference to generally recognized standards," such as market value, interest from the date of loss was awarded "as damages" to compensate the plaintiff for the loss occasioned by the defendant's tort. [Cited *authorities omitted*]. *Id.*, at 865.

So if, for example, the jury was asked to determine the value of a car *as of* January 1, 2012 and the jury made that determination by a verdict rendered on

July 1, 2012, the court would add interest on the jury's award for the period of January 1, 2012 through July 1, 2012.

The calculation of pre-verdict interest got confusing with the amendment of Minn. Stat. § 549.09 in 1984. To create an incentive to settle cases, the statute now allowed pre-verdict interest to be tacked on where previously it would not have been. Returning to our earlier example, if the plaintiff was injured on January 1, 2012 and the jury awarded \$1,000 in damages as of July 1, 2012, the trial court might still tack on "pre-verdict" interest if, for example, the plaintiff offered to settle for \$1,000 on January 1, 2012 and the defendant made no settlement offers.

But apart from the essentially punitive nature of Minn. Stat. § 549.09 as amended in 1984, interest remains a tool by which the court may order compensation to someone for the loss of use of money. In this case a jury determined that Mrs. Staab was entitled to \$224,200.70 *as of* March 25, 2009. Adding on pre-verdict interest pursuant to the provisions of Minn. Stat. § 549.09 [\$30,019.78], and adding on taxable costs [\$7,869.53], the trial court determined that Mrs. Staab was entitled to \$262,090.01 *as of* March 25, 2009. After the payment by the Diocese of \$135,973.38 on July 30, 2009, Mrs. Staab was left with an unpaid judgment in the amount of \$129,764.35. This judgment—in the amount of \$129,764.35 *as of* July 30, 2009—is Richard Staab's "equitable share of the obligation."

The only way to properly calculate Richard Staab's "equitable share of the obligation" as of September 24, 2012, is to take the known figure of \$129,764.35 as of July 30, 2009 and add interest to it from July 30, 2009 through September 24, 2012. Anything less fails to properly compensate Mrs. Staab in the amount the jury and court determined she should have as of March 25, 2009.

The trial court's analysis focused on what it *deemed* equitable for the Diocese to pay, but the reallocation statute expressly states that the amount to be reallocated is a party's uncollectible "equitable share of the obligation." In this case, Richard Staab's "equitable share of the obligation" is \$129,764.35 as of July 30, 2009. The only way to convert the \$129,764.35 figure to an appropriate amount as of September 24, 2012 is to add interest to it.

The only real issue that arises given the circumstances is the appropriate source for determining interest on the obligation. Again, the fatal flaw in the trial court's reasoning is that it evaluated the obligation as belonging to the Diocese and from that viewpoint the court found no basis for awarding interest. But the reallocation statute clearly states that what is being reallocated is the obligation of Richard Staab. Minnesota statutory law unequivocally provides that in determining Richard Staab's obligation as of September 24, 2012 for an obligation in the amount of \$129,764.35 as of July 30, 2009, we must add interest from July 30, 2009 through September 24, 2012; and the basis for awarding the interest is Minn. Stat. § 549.09, Subd. 1(c) (2).

RESPONDENT/APPELLANT STAAB'S CONCLUSION

Because the trial court appropriately ruled that Minn. Stat. § 604.02, Subd. 2, applies in this case, the trial court's Order Granting Motion for Reallocation must be affirmed. Because the trial court improperly determined the "equitable share" to be reallocated by omitting a significant amount of interest, this matter must be remanded to the trial court for entry of a judgment which includes interest from March 25, 2009 through August 7, 2012.

Respectfully submitted,

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STATE OF MINNESOTA
IN COURT OF APPEALS

Alice Ann Staab,

Respondent/Appellant,

vs.

Diocese of St. Cloud,

Appellant/Respondent.

RESPONDENT/APPELLANT STAAB'S CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,535 words. This brief was prepared using Microsoft Office Word 2007.

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