

No. A09-1335

STATE OF MINNESOTA
IN SUPREME COURT

Alice Staab,

Appellant,

vs.

Diocese of St. Cloud,

Respondent,

RESPONDENT'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

- I. Whether the District Court erred as a matter of law in ordering the Diocese of St. Cloud to pay 100% of Alice Staab's damages even though it was found to be 50% at fault?

This issue was presented to the District Court through the Diocese of St. Cloud's Post-Trial Motion for Amended Findings. (A16-A20).

The Trial Court held that Minnesota Statute § 604.02 is inapplicable and the Diocese of St. Cloud was responsible for 100% of Alice Staab's damages.

The Diocese of St. Cloud preserved the issue for appeal by filing a post-trial motion to Amend the Court's Findings, and by the arguments advanced during the motion hearing held before the trial court. (A16-20)

Apposite authority:

Minn. Stat. § 604.02 (2003)

STATEMENT OF THE CASE

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

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

The Court of Appeals reversed the decision of the District Court holding that pursuant to the plain language of Minnesota Statute § 604.02, the Diocese is only severally liable for its proportional share of Appellant’s damages. The

¹ 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.

Diocese was not “more than 50% at fault” and therefore is not jointly and severally liable for the entire award.

STATEMENT OF FACTS

On April 9, 2005, Appellant Alice Staab was injured when Mr. Staab, pushed her wheelchair off a step, causing Appellant to fall out of her wheelchair. Appellant sued the Diocese alleging that the step constituted a dangerous condition on the property and that this condition caused Appellant’s injuries. (A1-2). Appellant did not sue Mr. Staab and the Diocese did not bring a third-party action against Mr. Staab. Id. However, Mr. Staab was included on the verdict form and the jury was asked to consider Mr. Staab’s negligence in completing the verdict form. (Add. 4 – 5)

The jury assigned 50% liability to the Diocese and 50% liability to Mr. Staab. Id. The court entered judgment against the Diocese, ordering the Diocese to pay 100% of Appellant’s damages. (Add. 8-9) The court also issued Findings of Fact, Conclusions of Law and an Order requiring the Diocese to pay 100% of Appellant’s damages. (Add. 10 – 12) The Diocese sought to amend the Court’s Findings of Fact, Conclusions of Law and Order in light of Minnesota Statute § 604.02. See Id. The Court denied the Diocese’s motion. See Id. The Diocese appealed the decision and the Court of Appeals reversed the decision of the District Court, holding, according to the plain language of Minnesota Statute § 604.02 subd. 1, the Diocese is severally, but not jointly liable, and therefore only

responsible for its proportionate share (50%) of the total award. Appellant is now seeking reversal of the Court of Appeals' decision.

STANDARD OF REVIEW

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

ARGUMENT

In 2003, the Minnesota Legislature chose to drastically modify Minnesota's joint and several liability law.² Prior to the amendment, any person could be held liable for 100% of a jury's verdict unless certain specified conditions were met. Under the revised law, however, a person is only responsible for damages proportionate to their own percentage of fault unless that person's apportionment of fault is 51% or greater. If a person's fault is 51% or greater, then and only then is that person jointly and severally liable for 100% of the jury's verdict. If a person is allocated fault of 50% or less, there is no joint liability for the entire award and a person is only severally liable for damages in proportion to

² See Add. 18 citing Michael K. Steenson, *Joint and Several Liability in Minnesota: The 2003 Model*, 30 William Mitchell L. Rev. 845, 846 (2004) noting that the 2003 amendment is a serious limitation on the rule of joint and several liability.

the allocation of fault. Minn. Stat. § 604.02 subd. 1. The plain language of the statute is unambiguous and should be given full effect. Accordingly, the decision of the Court of Appeals should be affirmed.

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

Interpreting a statute is a question of law. See Hibbing Educ. Ass'n v. Pub. Employment Relations Bd., 369 N.W.2d 572 (Minn. 1985). Rules of statutory construction require courts to harmonize apparently conflicting provisions where possible. Septran, Inc. v. Independent School Dist. No. 271, 555 N.W.2d 915 (Minn. App. 1996). The Court is to presume that statutes are passed with deliberation and with full knowledge of all existing statutes on the same subject. County of Hennepin v. County of Houston, 229 Minn. 418, 39 N.W.2d 858 (Minn. 1949). The goal of statutory interpretation is to effectuate the intent of the legislature. Educ. Minn.-Chisholm v. Indep. Sch. Dist. No. 695, 662 N.W.2d 139, 143 (Minn. 2003). Words are to be construed according to their “common and approved usage.” Minn. Stat. § 645.08 subd. 1.

If the meaning of a statute is unambiguous, the Court should interpret the statute's text according to its plain language. Molloy v. Meier, 679 N.W.2d 711, 723 (Minn. 2004). When a statute, read according to ordinary rules of grammar, is unambiguous, that plain language is followed. Walser Auto Sales, Inc. v. City of Richfield, 635 N.W.2d 391 (Minn. Ct. App. 2001). A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.

Am. Family Ins. Group v. Schroedl, 616 N.W.2d 273, 277 (Minn. 2000). A statute should be interpreted, whenever possible, to give effect to all of its provisions; “no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” Id. The Court is to read and construe the statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations. Id.

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

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

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

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

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

The phrase “[w]hen two or more persons are severally liable” determines the scope of the joint and several liability statute, and the interpretation of this phrase, and specifically the words “persons,” “severally,” and “liable,” are central to the resolution of the issue on appeal, namely whether the statute applies even where a jury has allocated 50% fault to a non-party. When these words are given their plain meaning, the joint and several liability statute requires the Diocese only pay that amount of damages that is proportionate to its allocation of fault.

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

Minnesota Statute § 604.02 applies to determine a person’s contribution to a plaintiff’s damages, regardless of whether the other at-fault persons were parties to the underlying action. The statute applies “where two or more persons are severally liable.” Minn. Stat. § 604.02 subd 1. Stated otherwise, the statute applies any time the jury is allowed to consider the fault of more than one tortfeasor or where two or more “persons” are found to be liable. If the legislature had intended the statute to apply only to named parties in a lawsuit, the legislature could have expressed this intention by clearly stating that the statute applies where two or more “parties” are severally liable. In fact, in drafting the reallocation provisions of the joint and several liability statute under Minnesota Statute § 604.02 subd. 2, the legislature chose to use the word “parties” instead of “persons.” However, the plain language of the statute controls, and the plain

language unambiguously states that the Minnesota Statute § 604.02 subd. 1 applies to “persons.”

The Court of Appeals correctly held that the term “person” must be defined broadly to include not just a party to a lawsuit, but any tortfeasor “whose fault has been submitted to the jury, or, in other words, parties to the transaction.” (Add. 16) citing Hosley v. Armstrong Cork Co., 383 N.W.2d 289, 293 (Minn. 1986) (defining “party” for purposes of the reallocation provision of Minn. Stat. § 604.02). In Hosley, the Court, citing to Lines v. Ryan, determined the broader reading of the term “parties” for purposes of the joint and several liability statute was appropriate. The Court stated:

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

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

[The provision] avoids the unfairness both of the common law rule of joint and several liability, which would cast the total risk of

uncollectibility upon the solvent defendants, and of a rule abolishing joint and several liability, which would cast the total risk of uncollectibility upon the claimant.

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

The plain language of Minnesota Statute § 604.02 subd. 1 should be applied without tweaking or torture. The statute expressly provides that the statute applies where two or more persons are severally liable. The term persons should be given its plain meaning and not artificially narrowed to mean “parties to the lawsuit,” particularly where the term “parties” has not been afforded such a narrow construction. See Hosley, 383 N.W.2d at 293. There is no requirement that these persons be parties to the action. This Court has interpreted the scope of the joint and several liability statute broadly, holding that the fault of all parties to the transaction should be considered in determining allocations of fault, regardless of whether they are parties. Hosley, 383 N.W.2d at 293. The allocation of fault to each individual tortfeasor is extremely important under the amended joint and several liability statute because it is the allocation of fault assigned to each person that determines whether that person is subject to joint liability. Minn. Stat. § 604.02 subd. 1. Accordingly, Appellant’s suggested interpretation of the statutory language should be rejected in favor of the statute’s plain meaning.

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

In 2003, the legislature amended the introductory sentence of Minnesota Statute § 604.02, which determines the scope of the statute, by changing the phrase “where two or more persons are jointly liable” to “where two or more persons are severally liable.” Minn. Stat. § 604.02 subd. 1. Blacks Law Dictionary defines several liability as:

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

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

Liability shared by two or more parties.

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

Minnesota Statute § 604.02 no longer requires two persons to be jointly liable for the provisions of the statute to apply. Instead, the provisions of the joint and several liability statute apply where two or more persons are severally, or separately, liable. Here, the Diocese and Mr. Staab are separately liable for Appellant’s injuries. Stated simply, the statute applies where more than one person has been found to be responsible for a plaintiff’s injuries. Joint liability for

100% of a plaintiff's damages only arises when a person who is severally liable is found to be more than 50% at fault.

The Diocese and Mr. Staab are severally, or separately, liable for Appellant's injuries. Neither Mr. Staab nor the Diocese were found to be more than 50% at fault, and therefore there is no joint liability in this case. Instead, the Diocese is only separately, or "severally" liable for its own allocation of fault.

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

Minnesota Statute § 604.02 provides the provisions of the joint and several liability statute apply where "two or more persons are severally liable." Minn. Stat. § 604.02 subd. 1. Appellant asserts that Minnesota Statute § 604.02 subd. 1 does not apply in this case because only one person, namely the Diocese, was "liable" for Appellant's injuries, claiming that a person becomes "liable" when there is a legal obligation to pay damages. Contrary to Appellant's argument, Minnesota Courts have repeatedly held that a person becomes "liable" at the time of the alleged negligence, not at the time of a judgment. The Minnesota Supreme Court has stated that common liability "is created at the instant the tort is committed." White v. Johnson, 137 N.W.2d 674, 679 (1965); Spitzack v. Schumacher, 241 N.W.2d 641, 643 (Minn. 1976). Indeed, Minnesota Supreme Court noted in Maday v. Yellow Taxi of Minneapolis:

It has always been the law of this state that parties whose negligence concurs to cause injury are jointly and severally liable although not

acting in concert. Mathews v. Mills, 178 N.W.2d 841 (Minn. 1970). This common-law rule has been incorporated into our comparative negligence statute.

Maday v. Yellow Taxi of Minneapolis, 311 N.W.2d 849, 850 (Minn. 1981) [emphasis added]. The Maday Court did not state that parties who are found jointly liable for a judgment are jointly and severally liable. The Minnesota Supreme Court has made it clear that the “liability” necessary for triggering the application of the joint and several liability statute is concurring negligence, not an obligation to pay a verdict.

This definition of “liability” again appears in the Minnesota Supreme Court’s opinion Kisch v. Skow, which holds “where there is joint and several liability, plaintiffs may sue one, all or any number of joint tortfeasors without violation of Rule 19.01.” 233 N.W.2d 732, 734 (Minn. 1975). In Kisch, the Court uses the phrase “joint and several liability” to describe a circumstance that exists before a plaintiff even sues out the case, allowing the plaintiff to then sue one or more of the at fault tortfeasors. Id. If we were to accept Appellant’s theory that “liability” can only mean “liable for a judgment,” the Court’s holding in Kisch would be self-contradictory and meaningless.

The Minnesota Supreme Court spoke again on this issue in Hosley, stating that the comparative negligence statute and the comparative fault statute were codifications of the common law that “parties whose negligence concurs to cause an injury are jointly and severally liable.” 383 N.W.2d at 292. The common law referenced by Hosley is set forth in decisions such as Employers Mut. Casualty

Co. v. Chicago, St. P. M. & O. Ry. Co., White v. Johnson, and Spitzack v. Schumacher, all of which are also decisions of the Minnesota Supreme Court. 50 N.W.2d 689 (Minn. 1951); 137 N.W.2d 674 (Minn. 1965); 241 N.W.2d 641 (Minn. 1976).

Despite the fact that the Minnesota Supreme Court has directly and unequivocally spoken on this issue on at least seven occasions in Employers Mut., White, Spitzack, Kisch, Mathews, Maday, and Hosley, Appellant maintains that the definition of “liable” really means “liable for a judgment.” Appellant’s argument posits that each and every time the Courts have used the term “liable” over the past sixty years of jurisprudence when discussing when liability accrues, each and every Court erred in its analysis.

The last sixty years of jurisprudence is not incorrect, rather, Appellant is confusing the use of the term “liable” for purposes of joint and several liability with the terms used in connection with claims for contribution and indemnity. Minnesota courts have long drawn a distinction between “liability” for the purposes of establishing common fault for an action and “liability” for the purposes of a claim for indemnity or contribution against another tortfeasor. While the Minnesota Supreme Court has held that common liability exists immediately after the acts of the tortfeasors that give rise to a cause of action against them, Employers Mut. Casualty Co. v. Chicago St. P M & O Ry. Co., 50 N.W.2d 689 (Minn. 1951), the Minnesota Supreme Court has also stated “it is joint liability, rather than joint or concurring negligence, which determines the

right of contribution.” Spitzack v. Schumacher, 241 N.W.2d 641, 645 n.2 (Minn. 1976). The term “liable” is only interpreted to mean “liable for a judgment” when used in the context of a claim for contribution. Spitzack v. Schumacher, 241 N.W.2d 641, 645 n.2 (Minn. 1976). This is not a claim for contribution. In the context of Minnesota Statute § 604.02 subd. 1, the plain meaning of the word “liable” is “concurring negligence causing injury.” See Maday, 311 N.W.2d at 850.

Here, the jury determined the negligence of Mr. Staab and the Diocese concurred to cause Appellant’s injuries, and accordingly, both were severally liable within the meaning of the statute. Accordingly, the joint and several liability statute applies to determine the Diocese’s contribution to Appellant’s damages.

Interpreting the word “liable” to mean “liable for a judgment” would also conflict with other unambiguous terms within the statute. Appellate courts are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations. In re Kleven, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007). “[W]ell-established rules of statutory construction require the court to harmonize apparently conflicting provisions where possible.” Septran, Inc. v. Indep. Sch. Dist. No. 271, 555 N.W.2d 915, 919 (Minn. Ct. App.1996).

If the court were to hold the term “liable” in the phrase “where two or more persons are severally liable” means “liable for a judgment” this interpretation would wholly conflict with the plain meaning of the terms “persons” and

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

Likewise, interpreting the term “liable” to mean “liable for damages” would be inconsistent with the legislature’s decision to apply the provisions of the joint and several liability statute where persons are severally, as opposed to jointly liable. If the term “liable” were interpreted to require liability for a judgment, the legislature’s change of the word “jointly” to “severally” within the statute would be meaningless. When the legislature amended the statute to apply where two or more people are severally, rather than jointly liable, the effect was to allow for the application of the statute even where no joint liability for damages was established through the joinder of parties to a lawsuit. However, requiring the

effect of a judgment before the statute can apply would negate the effect of this deliberate change in the law. Accordingly, interpreting “liable” to mean “liable for a judgment” is inconsistent with the plain language of the statute, and should be rejected. The term “liable” ought to be interpreted to mean “liable for causing harm” in accordance with the plain language and the legislature’s intentions in passing the statute.

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

Minnesota Statute § 604.02 provides where two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that a person whose fault is greater than 50% is jointly and severally liable for the entire jury award. Minn. Stat. § 604.02 subd. 1. The Court of Appeals correctly held the Diocese was one of two “persons” found to be separately at fault, or “severally liable” for Appellant’s injuries and therefore the Diocese must contribute to Appellant’s damage in proportion to the percentage of fault attributed to it by the jury, namely 50%. The percentage of fault attributed to the Diocese is not greater than 50%, and therefore the Diocese is not jointly and severally liable for the entire jury award. Minn. Stat. § 604.02 subd. 1. Accordingly, the decision of the Court of Appeals should be affirmed.

Appellant takes exception the Court of Appeals holding in this case because Mr. Staab was not a party to the lawsuit, and a plaintiff cannot recover from a non-party tortfeasor. Appellant also erroneously casts the issue as whether the

Diocese may “reduce its obligation to the plaintiff by a percentage of fault attributed to a non-party.” This case is not about Mr. Staab or whether Appellant can collect damages from him. This case also does not pose the question of whether the allocation of fault attributed to Mr. Staab serves to “reduce” the Diocese’s obligation to the Appellant. This case is simply about whether the Diocese, which was found to be only 50% at fault for Appellant’s injuries, must nevertheless pay more than 50% of Appellant’s damages. As Minnesota Statutes § 604.02 subd. 1 and subd. 2 make clear, the determination of whether there is joint liability and the determination of whether a judgment is collectable are two separate questions.

As Appellant notes, before a plaintiff may collect a judgment from another person, that person must first be legally obligated to pay the judgment. Appellant argues the Court of Appeals interpretation and application of the joint and several liability statute is incorrect, because Mr. Staab cannot be forced to pay his share of the judgment as a non-party. However, Appellant fails to acknowledge that the Diocese likewise cannot be forced to pay 100% of the judgment, as there is no legal authority in support of this position. The plain language of the statute clearly provides that a person is only jointly liable – and therefore responsible for all of plaintiff’s damages – if that person is found to be more than 50% at fault. The Diocese was not found to be more than 50% at fault. There is simply no legal basis upon which the Diocese may be compelled to pay more than its fair share of the award.

In determining the amount of damages the Diocese must pay in this case, the plain language of the statute dictates that the Court must only look to the fault allocated to the Diocese. The determination of how much the Diocese must pay is not the result of a “reduction” based on the fault attributed to Mr. Staab. Mr. Staab’s fault is irrelevant. The Diocese is not arguing that Mr. Staab is in any way obligated to pay damages in a lawsuit where he was not a party. Instead, based on the plain language of the statute, the Court must only look at the percentage of fault allocated to the Diocese and determine whether the Diocese’s fault is more 50%. If it is more than 50%, the threshold for joint liability has been met and Diocese must pay 100% of Appellant’s damages. If it is 50% or less, there is no joint liability and the Diocese must pay in proportion to its percentage of fault. Here, the jury allocated 50% fault to the Diocese. Therefore, pursuant to the plain language of the statute, the Diocese does not meet the threshold for joint liability, and is only responsible for 50% of Appellant’s damages.

II. APPELLANT’S INTERPRETATION OF THE STATUTES LEADS TO ABSURD RESULTS.

Appellant alleges that where there is only one party to the lawsuit, the joint and several liability statute does not apply, even when more than one person is found liable for a plaintiff’s injuries. This interpretation leads to an absurd result.

For example, consider a situation where a plaintiff, P, is injured by the negligence of three tortfeasors A, B and C. P sues A, but chooses not to sue B or

C. The jury finds that A is 1% at fault for P's injuries, and B is 1% at fault and C is 98% at fault. Under Appellant's interpretation of the joint and several liability statute, A would be responsible for 100% of the jury's award because P chose not to sue B or C.

Now consider the same situation except that P sues A and B, but chooses not to sue C. The jury again finds that A is 1% at fault, B is 1% at fault, and C is 98% at fault. Under Appellant's proposed application of the statute, A and B are parties who are severally liable for a judgment, but both have been found to be less than 51% at fault, and therefore A and B must each only pay 1% of P's damages, and are not jointly liable for the entire award.

The only difference between these two scenarios is who the plaintiff chooses to sue, yet under the first scenario, A must pay 100% of P's damages, and under the second scenario, A must only pay 1% of P's damages. A defendant's obligation to pay a plaintiff's damages should be commensurate with the defendant's actual allocation of fault, not the number of parties a plaintiff chooses to sue.

Appellant's proposed application of the statute is particularly problematic because under Appellant's proposal, a minimally at fault defendant cannot take any action to protect itself from having to pay 100% of a plaintiff's damages. See Imlay v. City of Lake Crystal, 453 N.W.2d 326 (Minn. 1990). In Imlay, the Minnesota Supreme Court evaluated the constitutionality of the joint and several liability statute. Id. Before addressing the constitutionality of the statute, the

Court noted it was an open question whether the joint and several liability statute applied to that particular case because the plaintiffs had only sued the dram shop, and had not sued the intoxicated driver, Miller. Instead, the City, as owners of the dram shop, filed a third-party complaint against Miller. The court stated:

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

Imlay, 453 N.W.2d at 330 Fn. 3 (Minn. 1990). This comment, while dicta, raises the question of whether joint and several liability would apply if a defendant were to join another tortfeasor as an at-fault party. Stated otherwise, if the Imlay Court was correct in their observation, only a plaintiff has the ability to sue parties to trigger the application of joint and several liability. Named defendants are powerless to protect themselves from having to pay a disproportionate share of a plaintiff's damages.

As Imlay implies, under the pre-2003 statute a plaintiff could choose, for any number of strategic purposes, to sue only one of several potentially at-fault tortfeasors. While a defendant has a right to bring a third-party claim against any other persons who may have contributed to a plaintiff's injuries, as the defendants in Imlay did, a defendant is only allowed to bring a claim of contribution or indemnity against another tortfeasor. A claim of contribution and indemnification only obligates the third-party tortfeasor to reimburse the defendant after the defendant has paid damages in excess of his "fair share."

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

The plain language reading of the amended statute wholly avoids this complication. If two or more people are negligent and this negligence combines to cause an injury, each person is severally liable for their own percentage of fault. It is only where one person is more than 50% at fault when that person is liable for the entire jury verdict. Accordingly, if a plaintiff chooses to sue a person who is 1% at fault to the omission of the person who is 99% at fault, the plaintiff runs the risk of not collecting 99% of her verdict. However, if a plaintiff sues a person who is found to be 51% at fault or more to the exclusion of persons who were lesser contributors to the injury, the plaintiff is entitled to 100% of her award, and the defendant still retains the right of contribution against any other tortfeasors. This analysis fits squarely within the plain language of the statute.

Under Appellant's interpretation of the statute, a plaintiff could easily avoid the operation of the statute by simply suing only the most well-insured or 'richest' tortfeasor, and refusing to sue an indigent party or a family member so that the rich tortfeasor must absorb the fault of the non-joined parties. This scenario is not fictional or theoretical; it is exactly what occurred in this case. Adopting Appellant's interpretation of the statutory language leads to absurd results and is contrary to the intentions of the legislature as expressed by the statute's plain language.

Appellant argues that applying the plain language of the statute will lead to plaintiffs suing every possible actor connected with the event, even those only "marginally involved in transaction that is the subject of the case" at the risk of not collecting 100% of a jury's award to a plaintiff. This is simply not true. The statute dictates that any person found to be more than 51% at fault will pay 100% of a plaintiff's damages. A plaintiff must simply sue those persons who are most at fault for causing her injuries. A plaintiff does not need to sue every person who was "marginally involved" to obtain a full recovery, because the person who bears more than 51% of the responsibility for a plaintiff's damages will pay 100% of the award. This statute simply prevents a plaintiff from suing solvent or well-insured persons who were otherwise "marginally involved in the transaction" to the exclusion of persons such as insolvents or family members who may bear greater fault for a plaintiff's injuries. The statute will motivate plaintiffs to sue the persons that harmed them, not the persons who happen to have the most money.

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

The plain language of Minnesota Statute § 604.02 is unambiguous. The statute clearly directs that a person is responsible for damages in proportion to their allocation of fault, unless a jury finds they are 51% or more at fault. However, if the Court believes the plain language of the statute is ambiguous, the Court may look to the purpose of the statute, the circumstances under which it was enacted, the mischief the statute was intended to remedy, and the consequences of a particular interpretation. Minn. Stat. § 645.16. Prior versions of a law should be consulted only to solve an ambiguity, not to create one. Welscher v. Myhre, 42 N.W.2d 311, 313 (1950) (if statutory language is clear and unambiguous, no reference should be made to prior enactments).

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

372, 378 (Minn.1992) (courts should presume legislature acted with understanding of existing, related legislation).

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

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

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

The rule of absolute joint liability for all persons became onerous, particularly on persons who were either adequately insured or otherwise solvent but only minimally at fault. Since 1978, the Minnesota legislature has incrementally reduced the scope of Minnesota's joint and several liability scheme. (Add. 18). In 1986, the legislature limited the contribution of the state or of

municipalities to two times their percentage of fault, if their fault was less than 35%. Minn. Stat. § 604.02 (1986). The legislature again amended the law in 1988 by providing a ceiling of “four times the percentage of fault” for those persons whose allocations of fault were less than 15%. Minn. Stat. § 604.02 (1988). Under this rule, if a person was less than 15% at fault, they could not be forced to pay 100% of a jury’s award.

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

B. The 2003 Amendments Sought to Balance a Plaintiff’s Right to Recover Damages with a Defendant’s Right to Pay in Proportion to its Fault.

Plaintiffs historically have always received a reduction in damages in proportion to their fault under the comparative fault statute, but defendants were never allowed to limit their contribution to damages in proportion to their fault. Under prior versions of the joint and several liability statute, a defendant who was found minimally at fault could be forced to pay 100% of a plaintiff’s damages.

While the joint and several liability statute sought to ensure a means for full recovery by an injured party, the inequities of the rule often outweighed the benefits.

The inequities created by prior versions of the joint and several liability scheme were resolved by the legislature's 2003 amendments to Minnesota Statute § 604.02. First, the revised statute eliminated the circumstance where a minimally at fault defendant would be forced to pay 100% of a jury's verdict by expressly stating a defendant will only pay in proportion to its share of the damages. The only circumstance in which a defendant will pay more than his/her proportionate share of the damages is where a defendant's allocation of fault is greater than 50%. Stated otherwise, a defendant must pay 100% of a plaintiff's damages where that defendant is primarily at fault for causing the plaintiff's injuries. This change in the statutory language reflects a balance between the policy favoring full recovery of a plaintiff on one hand and assessment of damages in proportion to fault on the other. Under the amended law, a plaintiff will receive a full recovery from a defendant if the defendant was primarily at fault, but protects minimally at-fault defendants from being targeted as defendants simply due to wealth or adequate insurance coverage.

Second, the legislature's amendments changed the scope of the application of the statute, thus resolving issues related to the applicability of the statute regardless of whether at-fault persons are parties, non-parties, or third parties to the lawsuit. By changing the phrase "where two or more people are jointly liable"

to “where two or more people are severally liable,” the legislature closed the loophole that allowed a plaintiff to sue only the most solvent person, to the exclusion of other at-fault parties, leaving a defendant with no remedy other than contribution to avoid the burdens of joint liability. See Imlay, 53 N.W.2d at 330. By eliminating the requirement that persons be “jointly liable” before the statute would take effect, the legislature has directed that the only liability that matters in assessing contribution to a jury award is the liability that has been assigned to the person from whom contribution is sought. Each person who is separately, or severally, liable pays in accordance with his or her allocation of fault.

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

CONCLUSION

The plain language of Minnesota Statute § 604.02 subd. 1 provides a person is only obligated to pay his or her proportionate share of a plaintiff’s damages. Minn. Stat. § 604.02 subd. 1 (2003). A person is only jointly liable for the entire jury verdict if the person is more than 50% at fault for a plaintiff’s

damages. Id. This statute applies where the negligence of two or more persons concurs to cause injury, regardless of whether all at-fault persons are named in a lawsuit as parties.

The jury in this case determined the Diocese and Mr. Staab were both negligent, and that this negligence combined to cause Appellant's injuries. The Diocese was found to be 50% at fault. Because the Diocese is not more than 50% at fault, it is not jointly liable for the entire verdict. Id. Accordingly, the decision of the Court of Appeals should be affirmed.

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