

6

No. A12-1575

---

STATE OF MINNESOTA  
IN COURT OF APPEALS

---

Alice Staab,

Respondent,

vs.

Diocese of St. Cloud,

Appellant,

---

**APPELLANT'S BRIEF AND ADDENDUM**

---

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

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

Attorneys for Appellant Diocese of St.  
Cloud

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

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

Attorney for Respondent Alice Staab

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

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

Attorney for Respondent Alice Staab

**BURKE & THOMAS, PLLP**

Richard J. Thomas (#137327)  
Bryon G. Ascheman (#237024)  
Corinne Ivanca (#0386774)  
3900 Northwoods Drive, Suite 200  
St. Paul, MN 55112  
Telephone: (651) 490-1808

Attorneys for Amicus Curiae Minnesota  
Defense Lawyers Association

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).

**TABLE OF CONTENTS**

Table of Authorities..... ii

Legal Issues .....1

Statement of the Case and Facts..... 2

Standard of Review ..... 5

Argument..... 5

I. THE DISTRICT COURT ERRED IN “REALLOCATING” THE PORTION OF THE JURY AWARD RELATED TO THE NEGLIGENCE OF RICHARD STAAB BECAUSE THERE WAS NO JUDGMENT AGAINST RICHARD STAAB TO BE REALLOCATED ..... 7

    A. The Plain Language of the Statute Directs a Judgment Must be Entered and that Judgment Must be Uncollectible Before the Uncollectible Amount may be Reallocated Among Other Parties ..... 7

    B. The Minnesota Court of Appeals Has Held a Judgment Must Be Entered and that Judgment Must be Uncollectible Before the Uncollectible Amount may be Reallocated Among Other Parties..... 9

II. JOINT AND SEVERAL LIABILITY IS A PRE-REQUISITE FOR REALLOCATION..... 11

III. THE DISTRICT COURT’S HOLDING IS CONTRARY TO EXISTING LAW AND THE LEGISLATURES INTENTIONS OF LIMITING THE SCOPE OF JOINT AND SEVERAL LIABILITY.....14

IV. JUSTICE MEYER’S DICTA IN HER DISSENT IN STAAB IS NOT BINDING AND FAILS TO ACKNOWLEDGE A JUDGMENT AND JOINT LIABILITY FOR THE JUDGMENT ARE PRE-REQUISITES FOR REALLOCATION .....21

Conclusion..... 24

Index to Addendum ..... 26

## TABLE OF AUTHORITIES

### Cases

<u>Am. Family Ins. Group v. Schroedl</u> , 616 N.W.2d 273 (Minn. 2000) .....	7
<u>Bondy v. Allen</u> , 635 N.W.2d 244 (Minn. Ct. App. 2001) .....	5
<u>Conwed Corp. v. Union Carbide Chems. &amp; Plastics Co.</u> , 634 N.W.2d 401 (Minn. 2001) .....	11
<u>County of Hennepin v. County of Houston</u> , 39 N.W.2d 858 (Minn. 1949).....	18, 20
<u>Educ. Minn.-Chisholm v. Indep. Sch. Dist. No. 695</u> , 662 N.W.2d 139 (Minn. 2003).....	18
<u>Eid v. Hodson</u> , 521 N.W.2d 862 (Minn. Ct. App. 1994) .....	1, 6, 11, 12, 13, 14, 16, 18, 22, 24
<u>Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n</u> , 358 N.W.2d 639 (Minn. 1984).....	5
<u>Hahn v. Tri-Line Farmers Coop.</u> , 478 N.W.2d 515 (Minn. Ct. App. 1991)..	11, 17, 18
<u>Hosley v. Armstrong Cork Co.</u> , 383 N.W.2d 289 (Minn. 1986) .....	22
<u>Hosley v. Pittsburgh Corning Corp.</u> , 401 N.W.2d 136 (Minn. Ct. App. 1987) .....	1, 6, 9, 10, 11, 22, 24
<u>Hurr v. Davis</u> , 193 N.W. 943 (Minn. 1923) .....	10
<u>In re Kleven</u> , 736 N.W.2d 707 (Minn. Ct. App. 2007) .....	5
<u>Lambertson v. Cincinnati Corp.</u> , 257 N.W.2d 679 (Minn. 1977).....	17
<u>Maust v. Maust</u> , 23 N.W.2d 537 (Minn. 1946).....	19
<u>Newinski v. John Crane, Inc.</u> , A08-1715, 2009 WL 1752011 (Minn. Ct. App. June 23, 2009) (unpublished) .....	11

Staab v. Diocese of St. Cloud, 813 N.W.2d 68  
(Minn. 2012)..... 1, 5, 8, 12, 15, 19, 20, 21, 22, 23, 24

Walser Auto Sales, Inc. v. City of Richfield, 635 N.W.2d 391  
(Minn. Ct. App. 2001) ..... 7

**Statutes**

Minnesota Statute § 604.02 ..... 1, 10,

Minnesota Statute § 604.02 subd. 1 ..... 3, 5, 14, 15, 16, 19, 20, 21, 24

Minnesota Statute § 604.02 subd. 1 (1986) .....17

Minnesota Statute § 604.02 subd. 1 (1988) ..... 20, 21

Minnesota Statute § 604.02 subd. 1 (2010) .....13

Minnesota Statute § 604.02 subd. 2..... 1, 4, 6, 7, 11, 12, 16, 18, 19, 22, 23

**Rules**

Minnesota Rule of Appellate Procedure 103.03 (a).....1

**Other**

Blacks Law Dictionary 491 (2d ed. 2001)..... 8

## LEGAL ISSUES

**I. Whether the reallocation provisions of Minnesota Statute § 604.02 subd. 2 are applicable where the portion of a jury award to be reallocated has not been reduced to a judgment?**

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:** In the affirmative.

**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. Pittsburg Corning Corp., 401 N.W.2d. 136, 139 (Minn. Ct. App. 1987)

**II. Whether the reallocation provisions of Minnesota Statute § 604.02 are applicable where the party subject to reallocation is not jointly liable for payment of the amount to be reallocated?**

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:** In the affirmative.

**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)

## STATEMENT OF THE CASE AND 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

---

<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.

award attributable to Richard Staab was uncollectable and requesting an Order 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 fault attributed to the defendant 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 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 in accordance with the Supreme Court's Order for Remand and Entry of

Judgment. (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 now appeals from the District Court's Order and Judgment regarding reallocation.

## **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**

The Minnesota Supreme Court held that the Diocese is severally liable and therefore only responsible to pay its equitable share of the jury's award. Staab v. Diocese of St. Cloud, 813 N.W.2d 68, 80 (Minn. 2012). The Court also remanded the matter for entry of judgment in accordance with its decision. Id. Although the Minnesota Supreme Court held the Diocese could not be ordered to pay any more than its equitable share and despite the fact that no judgment was entered against Richard Staab, Respondent brought a Motion for Reallocation claiming the remaining 50% of the jury's award should be reallocated to the Diocese.

In connection with her motion, Respondent relied on commentary contained in the dissenting opinion in Staab. As part of its analysis, the dissent posited that the majority's holding was erroneous because the majority's interpretation of the statutory language of Minnesota Statute §604.02 subd. 1 would effectively require the Court to reallocate the remaining portion of the

verdict to the Diocese under Minnesota Statute § 604.02 subd 2. Id. at 85. At the time of this decision, the issue of reallocation was not properly before the Court and therefore the dissent's position was not directly addressed by the majority. Importantly, however, the majority commented that its decision did not rely upon the reallocation procedures of subdivision 2 and its holding "in no way alters [the Court's] previous decisions regarding subdivision 2." Id. at 79.

Specifically, these prior decisions regarding subdivision 2 hold: (1) the equitable share of an award attributable to a non-party is not subject to reallocation; and (2) there can be no reallocation where there is no joint liability for the amount to be reallocated. See Hosley v. Pittsburgh Corning Corp., 401 N.W.2d. 136, 139 (Minn. Ct. App. 1987), Eid v. Hodson, 521 N.W.2d 862 (Minn. Ct. App. 1994).

These authorities hold that reallocation is appropriate only where there is a judgment to be reallocated and where there is joint liability among the parties subject to reallocation. Here, there was no judgment entered against Richard Staab and the Diocese is severally, but not jointly, liable and therefore only responsible to pay its equitable share of the jury's award. For these reasons, and the reasons stated herein, reallocation is inappropriate and the decision of the District Court should be reversed.

**I. THE DISTRICT COURT ERRED IN “REALLOCATING” THE PORTION OF THE JURY AWARD RELATED TO THE NEGLIGENCE OF RICHARD STAAB BECAUSE THERE WAS NO JUDGMENT AGAINST RICHARD STAAB TO BE REALLOCATED.**

**A. The Plain Language of the Statute Directs a Judgment Must be Entered and that Judgment Must be Uncollectible Before the Uncollectible Amount may be Reallocated Among Other Parties.**

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).

The plain language of Minnesota Statute § 604.02 subd. 2 directs the court to determine whether all or part of a party’s equitable share of a judgment is uncollectable, and reallocate any uncollectable amount among the other parties according to their respective percentages of fault. Minnesota Statute § 604.02 subd (2) provides:

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 uncollectable** from that party and shall reallocate any uncollectable 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 claimant on the judgment.

Minn. Stat. § 604.02 subd. (2) [emphasis added].

After specifically referencing the entry of a judgment, the statute uses the term “obligation” to identify that amount which is subject to reallocation. The terms “judgment” and “the obligation” appear in the same sentence with no intervening terms. Black’s Law Dictionary defines the term obligation as (1) a legal or moral duty to do or not to do something; (2) A formal, binding agreement or acknowledgment of a liability to pay a certain amount or to do a certain thing for particular person or set of persons. BLACKS LAW DICTIONARY 491 (2<sup>nd</sup> ed. 2001). A party’s legal duty to pay damages in accordance with a jury’s verdict arises upon the entry of judgment. Based on the use of the word “judgment,” the plain meaning of the term “obligation” and the juxtaposition of the two words within the statute, the term “obligation” in the statute refers to the judgment entered in favor of a plaintiff.

In the current case, there is no judgment to be reallocated. The only judgment that has been (or could be) entered following the jury’s verdict is for 50% of the damages against the Diocese. See Staab, 813 N.W.2d at 80. This judgment has been fully satisfied. There is no judgment against Richard Staab and no judgment for the remaining 50% of the jury’s award. Despite this, however, the District Court found that Richard Staab’s “equitable share of the obligation is uncollectible” and ordered reallocation. (A. Add.-10). The District Court’s decision is contrary to the plain language of the statute which requires the entry of a judgment before reallocation can occur.

**B. The Minnesota Court of Appeals Has Held a Judgment Must Be Entered and that Judgment Must be Uncollectible Before the Uncollectible Amount may be Reallocated Among Other Parties.**

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 v. Pittsburg Corning Corp., 401 N.W.2d 136, 140 (Minn. Ct. App 1987) pet. for review denied (April 23, 1987) (hereinafter Hosley II). In Hosley II, the appellant argued the equitable share of damages allocated to a non-party were “uncollectable” because the non-party was not joined to the lawsuit and was therefore not bound by the existing judgment. Id. at 139. The Court of Appeals rejected this assertion:

The trial court believed it was unable to determine whether [the non-party’s] equitable share of liability for Hosley’s damages is uncollectible “because [the non-party] is not bound by the prior judgment.” The court stated, “implicit in the statutory term ‘uncollectibility’ is the legal right to collect.” No judgment has been entered against [the non-party] and so at this point there is no legal right to collect. The trial court concluded, “any determination that, at some time, some amount of money will be uncollectible from [the non-party] is premature.

[...] Pittsburg Corning argues that in any case involving a party to the transaction but not a party to the action tried, there is cause for a determination of uncollectibility.

We agree with the trial court's analysis. The reallocation provision speaks of a tortfeasor's "obligation" and its "continuing liability," and it is difficult to envision any occasion to determine uncollectibility before a legal obligation is established.

Hosley II 401 N.W.2d at 139-140. See also Hurr v. Davis, 193 N.W. 943, 944 (Minn. 1923) (holding that a judgment against persons not parties to the action was "clearly void for want of jurisdiction). The argument advanced by the appellant in Hosley II is precisely the argument advanced by Respondent in this case. Respondent alleges that Richard Staab's equitable share of the jury's award is "uncollectible" by virtue of the fact that Richard Staab is not a party to the lawsuit and therefore judgment cannot be entered against him<sup>2</sup>. The Court in Hosely II rejected this argument, holding a judgment must be entered before a determination can be made as to whether that judgment is collectible.

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 uncollectable. 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

---

<sup>2</sup> The District Court's Order erroneously states the parties conceded for the sake of argument that "the percentage of damages attributable to Richard Staab would be deemed uncollectible, as the term is used in subdivision 2." (A. Add.-05). For purposes of this argument, Appellant does not dispute Respondent's claim that Richard Staab is insolvent and does not have the financial means to pay a judgment. There is, however, no stipulation that Richard Staab's equitable share of the jury's award is "uncollectible."

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. Furthermore, Respondent cannot establish that any amount is “uncollectible” because the concept of “uncollectibility” necessarily includes the right to collect pursuant to a judgment. See Hosley II, 401 N.W.2d at 139-140. As such, the District Court’s Order granting Respondent’s Motion for Reallocation was erroneous because there was no judgment to be reallocated.

## **II. JOINT AND SEVERAL LIABILITY IS A PRE-REQUISITE FOR REALLOCATION.**

Minnesota case law also unequivocally establishes that 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 Hodson's assured the Eid's 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.

The Minnesota Supreme Court held the Diocese, like Scandy and the Hodons, is severally, and is not jointly, liable to Respondent. Staab, 813 N.W.2d at 79. The Supreme Court repeatedly asserts that the Diocese, as a severally liable defendant, cannot be forced to pay more than its equitable share of the award. In particular, the Court held:

When a jury attributes 50% of the negligence that caused a compensable injury to the sole defendant in a civil action and 50% to a nonparty to the lawsuit, Minn. Stat. §6040.2 subd. 1 (2010) requires that the defendant contribute to the award **only in proportion** to the fault attributed to the defendant by the jury. (Id. at 70)[emphasis added].

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. (Id. at 74)[emphasis added].

We construe this clause [“contributions to awards shall be proportion to the percentage of fault attributable to each”] 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. (Id. at 75)[emphasis added].

The 2003 amendments eliminated the blanket exception that “each is jointly and severally liable for the whole award” and substituted four specific exceptions. In doing so the Legislature explicitly limited the common law principle of joint and several liability to the four enumerated circumstances, thus enabling an injured person to recover more than a tortfeasor’s comparative-responsibility share in **only those four circumstances**. (Id. at 78)[emphasis added].

As a severally liable defendant, the Diocese is simply not subject to reallocation. See Eid, 521 N.W.2d at 864. In fact, as long as the Diocese was found to be 50% or less at fault, it would never be subject to reallocation, regardless of whether Richard Staab was ever made a party to the action.

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 Diocese] cites Eid v. Hodson for the proposition that a severally liable defendant is not subject to reallocation. 521 N.W.2d at 864. That case is distinguishable. In that case, the tortfeasors against whom the claim was uncollectable were only severally liable. There were not jointly and severally liable. To have allowed reallocation would have essentially provide 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. As such, by ordering reallocation of that portion of the jury's verdict that was attributed to Richard Staab to the Diocese, the Court is wholly eviscerating the concept of several liability. 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 law and directly contrary to the Supreme Court's decision confirming the Diocese is severally liable in this instance and only obligated to pay 50% of Respondent's damages.

### **III. THE DISTRICT COURT'S HOLDING IS CONTRARY TO EXISTING LAW AND THE LEGISLATURES INTENTIONS OF LIMITING THE SCOPE OF JOINT AND SEVERAL LIABILITY.**

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 "uncollectable." (A. Add.-04—A. Add.-10). The District Court held subdivision 1 does not wholly

replace joint liability with several liability; rather it only “limits recovery against that party to its percentage of fault unless and until reallocation is awarded.” Id. at 08. In effect, the District Court held that the Diocese is severally liable and only responsible to pay its equitable share of the jury’s award until such time that any other tortfeasor cannot pay or cannot be forced to pay, at which point the otherwise severally liable defendant becomes jointly and severally liable. This decision is directly contrary to the Supreme Court’s decision in Staab and the legislature’s clear intention of limiting the scope of joint and several liability. Furthermore, the practical effect of this decision is that it renders several liability meaningless.

Under the District Court’s rationale, a plaintiff has the sole power and authority to determine whether a potential tortfeasor will be severally or jointly and severally liable for the plaintiff’s damages. In practice, a plaintiff could completely circumvent the application and effects of 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, 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, instantaneously converting tortfeasor A's several liability to joint liability and allowing reallocation of the remaining 99% of the jury's award to tortfeasor A. 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 tortfeasors, rendering subdivision 1 completely ineffective.

The District Court's decision results in an exception to the application of reallocation where there is no 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. The Court in Eid held Hodson and Scandy were severally liable. Eid 521 N.W.2d at 864. The judgment against Scandy was ultimately determined to be uncollectible. Id. at 863. The Court of Appeals did not, as the District Court here suggests, determine that the Hodsons' several liability was to be enlarged to joint and several liability in light of the uncollectibility of the judgment against Scandy. Instead, the Court of Appeals held that the reallocation provisions of Minnesota Statute §604.02 subd. 2 simply do not apply where there is no joint liability.

Likewise, 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. 1992). 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 plain language of the reallocation statute has not changed since the time it was applied by the Minnesota Court of Appeals in both Eid and Hahn. In those cases, 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. Accordingly, consistent with its prior decisions which require joint liability for reallocation, this Court must reverse the District Court’s Oder to the contrary.

In addition to the District Court’s holding being contrary to the previous interpretations of Minnesota Statute § 604.02 subd. 2, applying the District Court’s holding in this case creates a result that is contrary to the legislature’s demonstrated intentions of limiting the scope of joint and several liability. 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). 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.

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.

The Supreme Court in Staab noted that 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, 813 N.W.2d at 77. At common law, all tortfeasors were jointly and severally liable. Modifications were made to the statute over time that decreased the scope of joint and several liability. Throughout this time, the language of the Minnesota Statute § 604.02 subd. 2 has remained unchanged.

The last set of substantive amendments to the joint and several liability statute prior to 2003 were made in 1988. These amendments included the addition of the “4 x 15” rule, which insulated minimally at fault tortfeasors from

having to pay awards that were disproportionate to their allocations of fault. Importantly, the language of Minnesota Statute § 604.02 subd. 1 directed a person who was less than 15% at fault was subject to pay up to only four times its allocation of fault, including any amounts subject to reallocation. Minn. Stat. § 604.02 subd. 1 (1988). Accordingly, even prior to the 2003 amendments that further narrowed the application of joint liability, minimally at fault defendants were not responsible to pay more than four times their proportionate share of fault, even if another tortfeasor's equitable share of the judgment was found to be uncollectible.

In 2003 the Legislature reduced the scope of joint and several liability even further, directing persons who are found to be 50% or less at fault to be only severally liable and only obligated to pay their equitable share of the jury's award. Staab 813. N.W.2d at 77-78. In enacting these amendments, we must assume that the legislature acted "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). Stated otherwise, we must assume the legislature intended to *do something* when it amended the statute. The plain language of the statute, and indeed the Supreme Court's interpretation of that language in Staab, directs the legislature was intending to continue on its course of limiting the scope of joint and several liability.

The District Court's holding on reallocation in this case is contrary to the demonstrated purposes of the legislature, and in fact broadens joint and several liability to its most expansive since 1988. Specifically, since 1988 the joint and several liability statute has capped a minimally at fault person's contribution to a jury award at four times its allocation of fault, even after uncollectable amounts were reallocated. Minn. Stat. § 604.02 subd. 1 (1988). However, under the District Court's present holding, a minimally at fault (even 1%) defendant may ultimately be forced to pay 100% of the jury's award if the remaining 99% of the jury's award is for any reason "uncollectible." Certainly, the legislature did not both intend to reduce the scope of joint liability by amending Minnesota Statute § 604.02 subd. 1 and simultaneously intend to increase the scope of joint liability by creating a statutory scheme under which all tortfeasors are jointly and severally liable for uncollectable portions of a jury award.

**IV. JUSTICE MEYER'S DICTA IN HER DISSENT IN STAAB IS NOT BINDING AND FAILS TO ACKNOWLEDGE A JUDGMENT AND JOINT LIABILITY FOR THE JUDGMENT ARE PRE-REQUISITES FOR REALLOCATION.**

The Diocese anticipates Respondent will rely on the dissenting opinion in Staab in support of her motion for reallocation. The dissenting opinion states:

Notwithstanding the majority's attempt to limit the payment of the Diocese to the innocent plaintiff, the majority's interpretation of the reallocation provision in section 604.02 will effectively obligate the Diocese to pay the entire award anyway. [...] The majority interprets the term "party" in subdivision 2 to mean "all persons who are parties to the tort, regardless of whether they are named in the lawsuit." Applying that meaning of "party" here, Richard Staab is a

party to the tort whose “equitable share of the obligation is uncollectible” because he cannot be required to contribute to the judgment. Upon motion, the district court would be required to reallocate that uncollectible amount to the Diocese. Minn. Stat. 604.02 subd. 2. Accordingly, the majority’s interpretation of subdivision 2 undoes the effect of its interpretation of subdivision 1.

Staab, 813 N.W.2d at 85. This analysis is flawed for a number of reasons. First, the dissent in Staab failed to recognize that the interpretation of the word “party” in Minnesota Statute §604.02 subd.2 to mean “party to the transaction” was not a decision made by the Staab majority, but instead an interpretation made by the Supreme Court in Hosley v. Armstrong Cork Co., 383 N.W.2d 289, 293 (Minn. 1986). Since 1986, the Minnesota Courts have applied this definition of “party” in addressing reallocation, and has held the percentage of fault attributed to a non-party cannot be reallocated to an at fault party. See Hosley II, 401 N.W.2d. 136, 139 (Minn. Ct. App. 1987). This Court has never held that the Hosley interpretation of the word “party” required reallocation of a non-party’s allocation of fault. In fact, the Hosley decision itself rejects this argument. See Hosley II, 401 N.W.2d at 139-140.

Second, the dissent failed to acknowledge that joint liability is a pre-requisite for reallocation. Eid v. Hodson, 521 N.W.2d 862, 864 (Minn. Ct. App. 1994). Indeed, the very concept of reallocation is dependent on a shared responsibility to pay a judgment, as discussed above.

The dissent seems to posit that the application of the joint and several liability statute to cases where only one of multiple tortfeasors has been made a

party to a lawsuit would lead to an absurd result. However, such a result is avoided by a correct application of the longstanding case law that has governed reallocation for nearly three decades. Reallocation is properly employed where there is an uncollectable portion of a judgment and where there is joint liability among at fault parties.

Indeed, in construing the meaning of subdivision 1, the Supreme Court states:

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, 813 N.W.2d at 76. Stated otherwise, holding the reallocation provisions of Minnesota Statute § 604.02 subd. 2 require the Diocese, a severally liable defendant, to pay more than its fair share of the judgment would render the language of subdivision 1 ineffective.

The Supreme Court surely was aware of Justice Meyer’s comments in her dissent regarding the reallocation provision at the time it issued its decision. Accordingly, in order to accept Respondent’s anticipated argument that reallocation is “mandated” by the Supreme Court’s decision in Staab, this Court

must conclude that all of the following propositions are true: (1) the Supreme Court was aware of its obligation to construe statutes so as to give effect to all statutory provisions and avoid conflict among statutory provisions; (2) the Supreme Court acknowledged and agreed with Justice Meyer that its majority opinion would be rendered ineffective by and be in conflict with the reallocation provision; and (3) the Supreme Court nevertheless issued its opinion, in knowing and deliberate derogation of its responsibility to interpret statutes so as to avoid conflict. These conclusions are simply untenable, and the comments included in the dissent in Staab should not be given any weight or authority.

### **CONCLUSION**

Simply stated, a severally liable defendant is not subject to reallocation. Eid v. Hodson, 521 N.W.2d 862, 864 (Minn. Ct. App. 1994). The Diocese is a severally liable defendant. Staab v. Diocese of St. Cloud, 813 N.w.2d at 80; Minn. Stat. § 604.02 subd. (1). Furthermore, the reallocation statute pertains to uncollectable portions of a judgment. There is no portion of the judgment against the Diocese that is unpaid and there is no judgment against Richard Staab that can be reallocated. Hosley II, 401 N.W.2d at 139-140. For these reasons, the Diocese respectfully requests the decision of the District Court be reversed.

QUINLIVAN & HUGHES, P.A.

Dated: 10-04-12

By: 

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