Who Pays When a Tortfeasor is Insolvent? The *Staab* Case Returns to the Minnesota Supreme Court

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The Minnesota Supreme Court's recent word on several liability is clear and far reaching: the reallocation provision in Minn. Stat. § 604.02, subd. 2, ***does not apply*** to parties who are only severally liable under Minn. Stat. § 604.02, subd. 1. *Staab v. Diocese of St. Cloud (Staab III)*, Nos. A12-1575, A12-1972, -- N.W.2d -- (Minn. Sept. 10, 2014). In other words, under Subdivision 2, a severally liable tortfeasor is responsible for paying only its share of the award.[1] This decision will have important implications, especially for cases involving insolvent tortfeasors.

Minnesota Statutes § 604.02 was revised to its current form in 2003. Since that time, the Court has issued two split opinions interpreting the revised statute, both involving the same underlying tort. This article refers to these Minnesota Supreme Court cases as *Staab I* and *Staab III*.[2]

[1] This article does not predict how Subdivision 3 will be interpreted in future cases. Subdivision 3 addresses reallocation in the context of product liability cases. The dissent in *Staab III* implies that applying the Court's reasoning to Subdivision 3 "make[s] no sense." (slip op. at D-9) The Court does not reference Subdivision 3, which leaves litigants left to wonder whether reallocation under Subdivision 3 applies to severally liable tortfeasors.

[2] The Court and dissent utilize different numbering conventions when referring to the many *Staab* opinions. This article adopts the numbering convention utilized by the Court.

A. Facts and *Staab I*

The underlying tort occurred at Holy Cross Parish School when Richard Staab pushed his wife (Plaintiff Alice Staab) in her wheelchair "through an open doorway and over an unmarked five-inch drop-off." (slip op. at 3.) Alice Staab ("Staab") was injured and sued the Diocese, which owned and operated the school. Staab did not sue her husband, and the Diocese never added him as a party in the case. At the Diocese's request, Richard Staab's name appeared on the verdict form as a non-party potentially at fault. The jury concluded that Richard Staab was 50% at fault and the Diocese was 50% at fault. The Supreme Court previously held (under subdivision 1 of Minn. Stat. § 604.02) that although Richard Staab was a non-party tortfeasor, the Diocese was nevertheless responsible for only its portion of the verdict (50%). *Staab v. Diocese of St. Cloud (Staab I)*, 813 N.W.2d 68, 80 (Minn. 2012). The Court in *Staab I* discussed that the default rule in Minnesota is that parties are only severally liable (that is, responsible only for their equitable portion of the award). There are exceptions to that scheme, but they did not apply.[3]

[3] The following persons are ***jointly and severally*** liable for the entire award: "(1) a person whose fault is greater than 50 percent; (2) two or more persons who act in a common scheme or plan that results in injury; (3) a person who commits an intentional tort; or (4) a person whose liability arises under" public health or environmental laws. Minn. Stat. § 604.02,

The dissent observed that the Court's holding would be inconsequential because the district court would be required under Subdivision 2 to reallocate Richard Staab's share of fault to the Diocese, because a non-party's share is uncollectible. *Staab I*, 813 N.W.2d at 85 (Meyer, J., dissenting). The Court stated that its ruling did not reach the interpretation of Subdivision 2. *Id.* at 79 n.7 (majority opinion).

Predictably, Staab followed the dissent's cue and moved in the district court under Subdivision 2 to collect the full award from the Diocese. Staab argued that Richard Staab's equitable share of the obligation was uncollectible. The district court agreed with Staab and concluded that "the uncollectible share of damages attributable to a non-party tortfeasor can be reallocated under" Subdivision 2. The Court of Appeals affirmed.

B. Staab III

The Court accepted review and interpreted Subdivision 2 of Minn. Stat. § 604.02.

Subdivision 2 of Minn. Stat. § 604.02 provides that if "all or part of a party's equitable share of the obligation is uncollectible from that party [a court] shall reallocate any uncollectible amount among the other parties." Minn. Stat. § 604.02, subd. 2. Here, Richard Staab was a non-party tortfeasor (and he was therefore not subject to the judgment and had no responsibility to pay).[4] On appeal to the Minnesota Supreme Court, the Diocese argued that Subdivision 2 does not apply to severally liable tortfeasors because a contrary ruling would undermine the principle of several liability, and would "eviscerate[]" the Court's holding in *Staab I*. Staab argued that Subdivision 2 applies even to severally liable tortfeasors because the plain language of Subdivision 2 does not limit its application to parties who are jointly and severally liable. The Court concluded both interpretations were reasonable and therefore the statute is ambiguous regarding whether Minn. Stat. § 604.02, subd. 2, applies to severally liable tortfeasors.

Having concluded that Subdivision 2 is ambiguous, the Court relied on canons of statutory construction and legislative history to conclude that Subdivision 2 does not apply to parties who are *severally* liable. Although *Staab I* dealt exclusively with Subdivision 1,[5] the Court in *Staab III* thought the subdivisions were related and should be read together. (slip op. at 9; *see also id.* at 15) It emphasized the presumption in Minnesota that "[a] severally liable party 'is responsible for only his or her equitable share' of a damages award, even if the plaintiff chooses to sue fewer than all tortfeasors who caused the harm." (Slip op. at 8.) The Court then applied three canons of statutory construction: First, statutes must be construed to give effect to all provisions. (slip op. at 9) (citing *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000); Minn. Stat. § 645.17(2)). Subdivision 1 would be ineffective, the Court reasoned, if under Subdivision 2 a severally liable defendant

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subd. 1. That is, such a party may be liable for the entire award.

[4] Some of the opinions related to this case imply that Richard Staab was insolvent, and his share was uncollectible for that reason.

[5] *Staab I*, 813 N.W.2d at 79 n.7 ("The application of subdivision 2 to this case is not before us, however, and therefore we do not reach it.").

had to pay more than its equitable share of the obligation.

Second, the Court relied on the doctrine of *expressio unius est exclusion alterius* – which means that the expression of one thing means the exclusion of another. (slip op. at 10) (citing *In re Welfare of J.B.*, 782 N.W.2d 535, 543 (Minn. 2010); Minn. Stat. § 645.19). The Legislature has expressly limited the circumstances under which a party may be *jointly and severally* liable:

> The fact that one liable party is insolvent or cannot be collected from for other reasons *is not one of the four exceptions* in subdivision 1 to which joint and several liability still applies. Yet that would be the practical effect of permitting reallocation to severally liable parties under subdivision 2.

Staab III, slip op. at 10 (emphasis added).

Third, the Court discussed that, over time, the Legislature has consistently narrowed the circumstances in which *joint and several* liability applies. (slip op. at 11) Further, when debating the 2003 amendments, legislators discussed competing notions of fairness, and those in favor of the bill won: although some plaintiffs may not be fully compensated, the proponents of the bill said it was a fair amendment because it "requir[ed] people and companies to pay for the harm they cause but not for the harm caused by others." (slip op. at 13)

In sum, the Court refused to interpret Subdivision 2 in a way that would force solvent parties who are only severally liable to pay for insolvent parties' obligations.

The Court's holding is:

> **[W]e hold that a party who is severally liable under Minn. Stat. § 604.02, subd. 1, cannot be ordered to contribute more than that party's equitable share of the total damages award under the reallocation-of-damages provision in Minn. Stat. § 604.02, subd. 2.**[6]

(slip op. at 16)

The dissent[7] would not have held that the statute was ambiguous, and faulted the Court for not identifying any ambiguous words or phrases in either Subdivision 1 or Subdivision 2. (slip op. at D-5) The dissent articulated other areas of disagreement, including that Subdivision 2 has not been amended since 1978 and has been interpreted the same way since that time (until now). And, when the Legislature amended Subdivision 1 in 2003, it could have amended Subdivision 2 if it wanted to change its meaning—it did not. The dissent also disagreed with the Court's "harmonious reading" of Subdivisions 1 and 2, noting that the Court's analysis does not make sense

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[6] In adopting this holding, the Court rejected *O'Brien*, in which the Court of Appeals held that Subdivision 2 "does not require joint and several liability as a prerequisite to reallocation." *O'Brien v. Dombeck*, 823 N.W.2d 895, 900 (Minn. App. 2012). But the Court did so without citing *O'Brien.*

[7] Justice Wright wrote for the Court. Justice Lillehaug (joined by Justice Page) dissented.

when applied to Subdivision 3. Subdivision 3 applies to reallocation in products liability cases. Would Subdivision 3 also apply *only if* a party was jointly and severally liable?

In the dissent's view, "[t]he blameless plaintiff should not bear 50% of her loss while a solvent tortfeasor escapes reallocation." (slip op. at D-14).

C. Conclusion

Either potential result in *Staab III* would have been somewhat unsatisfying: Leave the plaintiff undercompensated, or require a tortfeasor to pay more than its fair share of the award. Consider a situation where a solvent tortfeasor is only 2% at fault and an insolvent tortfeasor is 98% at fault. Either the plaintiff is substantially undercompensated or the solvent tortfeasor is responsible for paying fifty times its equitable share of the award. Ultimately, the Court struck the balance in favor of the severally liable tortfeasor, which was consistent with the trend in Minnesota law to limit tortfeasors' obligations to pay for other tortfeasors' share of the award.

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