SEPTEMBER 11, 2014

CASE LAW UPDATE

OLWK's Civil Litigation Practice Group

Minnesota Supreme Court Issues Long-Awaited *Staab II* Decision.

In a 5-2 decision this week in *Staab v. Diocese of St. Cloud*, the Minnesota Supreme Court held that a party severally liable under Minn. Stat. § 604.02, subd. 1 (2012), cannot be ordered to contribute more than that party's equitable share of the total damages award under the reallocation-of-damages provision of Minn. Stat. § 604.02, subd. 2 (2012). The supreme court's long-awaited decision brings a favorable end to a lengthy court battle over the construction and application of section 604.02. However, the policy debate at the heart of the dispute will likely spill over to the next legislative session.

This is the second time *Staab* was before the supreme court. In *Staab I*, decided in April 2012, the supreme court focused on section 604.02, subd. 1, holding that the "Several and Joint Liability" statute "applies when a jury apportions fault between a sole defendant and a nonparty tortfeasor, and limits the amount collectible from the defendant to its percentage share of the fault assigned to it by the jury." This meant that the Diocese of St. Cloud, which was found by a jury to be 50% negligent, was only severally liable pursuant to section 604.02, subd. 1 and thus obligated to pay only 50% of the plaintiff's damages, even though it was the only defendant in the lawsuit. The plaintiff's husband was also found to be 50% negligent but was not a party to the case.

Staab I remains significant and is not affected by this week's decision in *Staab II*. But, given the procedural nature of the case, the *Staab I* court did not reach the secondary issue of how reallocation of damages pursuant to section 604.02, subd. 2 might impact its decision. On remand, the battle therefore became whether the damages apportioned to the at-fault (and likely judgment-proof) non-party could be reallocated to the Diocese as uncollectable. The district court and court of appeals agreed the damages could be reallocated to the severally liable Diocese. The supreme court disagreed, and held that the damages could not be reallocated to the Diocese.

Writing for the majority, Justice Wright first considered the language of section 604.02, subd. 2. She determined that subdivision 2 is susceptible to more than one reasonable interpretation and thus ambiguous as to whether it applies to severally liable parties. According to Justice Wright, one reasonable interpretation of subdivision 2 is that severally liable parties are subject to reallocation, as the court of appeals ruled. However, a second reasonable interpretation of subdivision 2 is that damages cannot be reallocated to parties who are only severally liable under the 2003 Amendments to section 504.02, subd. 1.

Justice Wright then turned to the canons of statutory construction, legislative history, and the purpose of section 604.02. She concluded that these factors preclude application of the

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reallocation-of-damages provision to severally liable parties such as the Diocese, which are found to be less at fault than the statutory threshold for joint and several liability under subdivision 1. The general rule in Minnesota is that defendants are severally liable unless a specific exclusion in subdivision 1 applies. Subdivision 2 does not create a fifth exception or otherwise alter the general rule.

Justice Lillehaug authored a vigorous dissent, which was joined by Justice Page. Justice Lillehaug began by stating, "Today a blameless plaintiff, who was thrown out of her wheelchair onto a cement sidewalk, is denied a remedy for half of the damages she suffered." This statement highlights the policy debate that will likely be presented to the legislature during the next session. In addition to his observation of a perceived "injustice," Justice Lillehaug discussed at length the ways in which the majority allegedly "violates the plain words of the law, judicially amends what the legislature did not, and ignores our long-standing rule that statutes in derogation of the common law must be strictly construed."

In response, Justice Wright observed that the dissent simply "disagrees with the Legislature's decision to curtail joint and several liability in Minnesota," and stated that "the Legislature—not the courts—remains the appropriate venue to revisit this genuine policy debate."

Please contact us if you have any questions regarding the supreme court's decisions in *Staab I* and *Staab II* or the current state of the law regarding the apportionment and reallocation of damages in Minnesota.

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7401 Metro Boulevard | Suite 600 | Minneapolis | Minnesota | 55439-3034
OLKWLaw.com | 952-831-6544

Shamus O'Meara
SPOMeara@olwklaw.com
d: 952.806.0438

Tim J. Leer
TJLeer@olwklaw.com
d: 952.806.0420

Dale O. Thornsjo
DOThornsjo@olwklaw.com
d: 952.806.0498

Morgan Godfrey
MAGodfrey@olwklaw.com
d: 952.806.0403

Michael Skram
MMSkram@olwklaw.com
d: 952.806.0457

Mark R. Azman
MRAzman@olwklaw.com
d: 952.806.0408

Brian McSherry
BMMcSherry@olwklaw.com
d: 952.806.0426

Lance Meyer
LDMeyer@olwklaw.com
d: 952.806.0409

Stephanie Chandler
SLChandler@olwklaw.com
d: 952.806.0477

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