O'MEARA WAGNER
Attorneys at Law P.A.

(952) 831-6544 | 7401 Metro Boulevard Suite 600, Minneapolis, MN 55439 | www.olwklaw.com

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Minnesota Supreme Court to Decide Whether Minn. Stat. § 604.02, subd. 1 Applies in Workplace Injury Cases

The Minnesota Supreme Court recently heard oral argument in Fish v. Ramler Trucking, Inc. , A18-0143, in which the court will decide for the first time whether the current version of Minn. Stat. § 604.02, subd. 1 applies in workplace injury cases in which a third-party tortfeasor and an employer are both found to be at fault for an employee's injuries. The statute states, in pertinent part, as follows:
When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award:

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

In 2012, the Minnesota Supreme Court considered the impact of the 2003 amendments to Section 604.02, subd. 1 for the first time and held that the 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." Staab v. Diocese of St. Cloud , 813 N.W.2d 68, 80 (Minn. 2012) (Staab I) . In Staab, since the jury apportioned fault 50-50 between the owner of the premises where she was injured and her husband, the plaintiff was only able to recover 50% of her damages, even though neither her nor the premises owner had sued her husband.

Two years later, the supreme court solidified its decision in Staab I by holding in a subsequent appeal in the same case "that a party who is severally liable under Minn. Stat. § 604.02, subd. 1 (e.g., a party who is 50% or less at fault and does not meet one of the other three exceptions to several liability enumerated in the statute), cannot be required to contribute more than that party's equitable share of the total damages award through the reallocation-of-damages provision in Minn. Stat. § 604.02, subd. 2." Staab v. Diocese of St. Cloud , 853 N.W.2d 713, 715 (Minn. 2014) (Staab II) . In other words, the supreme court recognized that the reallocation-of-damages provision of the statute is merely a mechanism by which jointly and severally liable parties can reallocate an uncollectible portion of an award amongst themselves and the plaintiff, not a mechanism by which to increase a severally liable party's liability. Id. at 719 ("[W]hen subdivision 2 was enacted, it was a mechanism to limit the amount of damages that a jointly liable defendant could be required to pay.").

A key unanswered question following the supreme court's decisions in Staab I and II was whether Section 604.02, subd. 1 would similarly apply to limit a severally liable tortfeasor's liability to its percentage of fault in a workplace injury case in which the predominately at-fault party is the plaintiff's employer. The prevailing view, at least early on, seemed to be that it would as evidenced by the federal and state district

courts' decisions in Gaudreault v. Elite Line Servs., LLC , 22 F.Supp.3d 966 (D. Minn. 2014) , Humphreys v Owens-Illinois, Inc. , No. 62-CV-13-7709, 2014 WL 5846722 (Minn. Dist. Ct. Nov. 6, 2014), and Conda v. Honeywell International, Inc. , 62-CV-15-4651 (Minn. Dist. Ct. Jun. 24, 2016).

It was therefore not a surprise when the district court followed suit in Fish v. Ramler Trucking, Inc. in late 2017 and applied section 604.02, subd. 1 to limit a third-party tortfeasor's liability to the 20 percent of fault attributed to it by the jury even though the only other at-fault parties were the plaintiff (who was found to be 5 percent at fault) and his employer (who was attributed the remaining 75 percent of fault). 73-CV-15-10792, 2017 WL 4839113 (Minn. Dist. Ct. Oct. 2, 2017). Instead, the surprise came when the court of appeals reversed. Fish v. Ramler Trucking, Inc. , 923 N.W.2d 337 (Minn. Ct. App. 2019) .

The Fish case stems from an incident on a construction site. A special employee (i.e., loaned servant) of one contractor was injured while working aboard a flatbed trailer being pulled by a semi-tractor driven by an employee of another contractor. After settling his claim for workers' compensation benefits, the employee sued the other contractor for negligence. The second contractor, in turn, asserted third-party claims against the employee's employers (actual and loaned). Those claims, along with the workers' compensation carrier's subrogation rights, were resolved by a "reverse- Naig " before trial, but the employee's claims against the other contractor were tried to a jury.

The jury found that the employee, his special employer, and the non-employer contractor were each causally negligent and apportioned fault 5% to the employee, 75% to the special employer, and 20% to the other contractor. Following trial, the district court reduced the jury's award by the amount of workers' compensation benefits the employee received as required by Minn. Stat. § 176.061, subd. 11 and Minn. Stat. § 548.251, subd. 3 , and the employee's percentage of fault. The district court then held the non-employer contractor liable for 20% of the balance. The employee appealed, and the court of appeals reversed.

While recognizing that the 2003 amendments to Section 604.02, subd. 1 and the supreme court's decision in Staab I were game changers for the typical non-workplace injury case, the court of appeals determined that they did not control the allocation of fault in workplace injury cases such as Fish . Replying primarily on Lambertson v. Cincinnati Welding Corp. , 312 Minn. 114, 257 N.W.2d 679 (1977) and its progeny, the court of appeals determined that "the procedure for allocating damages between an employer and a third party when workers' compensation benefits have been paid is distinct from a comparative-fault apportionment under Minn. Stat. § 604.02." In so holding, the Court rejected the non-employer contractor's arguments that the legislature's codification of the Lambertson decision in section 176.061, subd. 11 and amendments to Section 604.02, subd. 1, as well as the supreme court's decisions in Staab , warranted a different result. In particular, the court cited the lack of "common liability—in tort or otherwise—between the [at fault parties]" as a barrier to applying Section 604.02, subd. 1 to limit the non-employer contractor's liability to its own percentage of fault.

Instead of applying Section 604.02, subd. 1 to limit the non-employer contractor's liability to its percentage of fault, the court of appeals held that the district court should have held the contractor jointly and severally liable for the entire damage award (including the 75 percent of fault attributed to the employer), less the employee's percentage of fault (5 percent) and collateral-source offsets. Had it not settled its contribution claim against the plaintiff's employers, the contractor would have then been entitled to contribution under Lambertson and Section 176.061, subd. 11 "in an amount proportional to the employer's percentage of fault but not to exceed the net amount the employer recovered" by way of subrogation.

The case is now pending before the Minnesota Supreme Court, where the key issue will be whether a jury's allocation of fault between a third-party tortfeasor and an employer means there are "two or more persons [who] are severally liable" so as to trigger application of Section 604.02, subd. 1. If it does, the statute should apply to limit the non-employer contractor's liability to the 20 percent of fault allocated to it by the jury even though the employee plaintiff is precluded by the Workers' Compensation Act from recovering the remainder of his damages from his employer in tort.

More importantly, the court shouldn't need to consider Lambertson and its progeny or Section 176.061 since limiting the non-employer contractor's liability to its own fault will eliminate the contribution concerns addressed in Lambertson and more recently Section 176.061, subd 11. In other words, the supreme court need not overrule Lambertson and its progeny (with the exception of the court of appeals' decision in Decker v. Brunkow , 557 N.W.2d 360 (Minn. Ct. App. 1996), rev. denied (Minn. Feb. 26, 1997) , in which it held that an earlier version of Section 604.02 did not apply to limit a minimally at-fault tortfeasor to four times its percentage of fault) or ignore Section 176.061, subd. 11 to apply Section 604.02, subd. 1 in workplace injury cases. Applying Section 604.02, subd. 1 in workplace injury cases to the same extent it is applied in non-workplace injury cases would simply limit the applicability of the right of contribution recognized in Lambertson and codified in Section 176.061, subd. 11 to cases in which a third-party tortfeasor is found to be jointly and severally liable under Section 604.02, subd. 1 and thus held liable for more than its fair share of the award.

On the other hand, if the supreme court determines that a third-party tortfeasor and an employer cannot be "severally liable" for purposes of Section 604.02, subd. 1, as the court of appeals found, the court will likely affirm the court of appeals and hold the non-employer contractor liable for the entire damage award, less the employee's percentage of fault and collateral-source offsets. This is because "[u]nder Minnesota common law, parties whose concurrent negligence caused injury were jointly and severally liable for the resulting damages." Staab II , 853, N.W.2d at 719. Accordingly, even though the Minnesota Legislature has gradually placed greater and greater limits on the rule of joint and several liability since codifying it in what is now Section 604.01, the supreme court will be left with the common law rule of joint and several liability if it determines that such limits do not apply.

While it is unclear how the supreme court will resolve the threshold several liability question in Fish given the language of the statute and the court's prior case law, applying section 604.02, subd. 1 to limit the non-employer contractor's liability to the same extent it would be limited in a non-workplace injury case is more consistent with the specific intent of the Workers' Compensation Act and the fairest rule for all concerned.

The supreme court has long recognized the "mutual renunciation of common law rights and defenses by employers and employees alike" (i.e., the grand bargain) on which the Workers' Compensation Act is based. See Hildebrandt v. Whirlpool Corp. , 364 N.W.2d 394, 397 (Minn. 1985) (quoting Minn. Stat. § 176.001, which goes on to specifically recognize that "[e]mployees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the [Act]."). The supreme court has also long sought to address the "obvious inequity" of holding "a third-party stranger to the workers' compensation system" liable for an employer's fault. See, e.g., Lambertson , 312 Minn. at 120, 257 N.W.2d at 684 (recognizing a jointly and severally liable party's right to contribution from an at-fault employer); see also Cambern v. Sioux Tools, Inc. , 323 N.W.2d 895, 798-800 (Minn. 1982) (refusing to aggregate the fault of a third-party manufacturer and at-fault employer for purposes of Minn. Stat. § 604.01). It would therefore be inconsistent with the intent of the Workers' Compensation Act and fundamentally unfair to require third-party tortfeasors to subsidize the workers' compensation system by bearing liability in contravention of the general rule of several liability that now anchors section 604.02.

Dale O. Thornsjo and I submitted a brief on behalf of Amicus Curiae The Minnesota Defense Lawyers Association in Fish . Along with the other attorneys in OWLK's Employer Liability and Workers' Compensation Subrogation Practice Groups, we have also been litigating the issues now before the Court since the supreme court handed down its decision in Staab I . Accordingly, if you have questions regarding the issues presently before the court or any other employer liability or workers' compensation subrogation issues, please contact us or another member of one of these practice groups at (952) 831-6544.