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MORE OF THE SAME: *Fish v. Ramler Trucking, Inc.* 935 N.W.2d 738 (Minn. 2019)

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The Minnesota Supreme Court upheld the *Lambertson* allocation procedure in *Fish v. Ramler Trucking, Inc.*, 935 N.W.2d 738 (Minn. 2019), despite amendments to the Minnesota Workers' Compensation Act, Minn. Stat. Ch. 176, and the comparative fault statutes, Minn. Stat. §§ 604.01, 604.02. Generally, an employee injured in the course and scope of work cannot bring common law tort claims against their employer for those injuries: workers' compensation is the employee's exclusive remedy. However, an at-fault third party (i.e. third-party tortfeasor) may seek contribution from the employer with limitations as articulated in Minn. Stat. § 176.061. Since the seminal case of *Lambertson v. Cincinnati Welding Corp.*, 257 N.W.2d 679 (Minn. 1977), courts have refused to apply the comparative fault principles found in Minn. Stat. § 604.02 to these contribution claims against the employer. Instead, Minn. Stat. §176.061 governs the rights of the third-party tortfeasor and obligations of the employer. *Fish* continued this trend and held that a third-party tortfeasor is responsible for fault allocated to an employer for a work-related injury. Minn. Stat. § 604.02 joint and several liability applies only when there are two or more severally liable parties. An employer is immune from tort liability under the exclusivity provision of the Minnesota Workers' Compensation Act, Minn. Stat. § 176.031, and thus cannot be severally liable. As such, Minn. Stat. § 604.02 does not apply to reduce the third-party tortfeasor's liability by the employer's percentage of fault. The at-fault tortfeasor pays the entire verdict to the employee, less the employee's comparative fault. The employer then reimburses the at-fault tortfeasor for its percentage of fault, but only up to the amount of workers' compensation benefits paid or payable to the employee. If the workers' compensation benefits paid or payable is less than the percentage of damages attributed to the fault of the employer, the third-party tortfeasor is responsible for the gap.

Click here for the complete summary of [Fish v. Ramler](#).

Please contact Elizabeth Roff at Brown & Carlson should you have questions regarding this decision, or any other matter.

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LAMBERTSON CONTRIBUTION PROCEDURE UPHELD

Fish v. Ramler Trucking, Inc., 935 N.W.2d 738 (Minn. 2019)

After the 1977 Minnesota Supreme Court decision in *Lambertson v. Cincinnati Welding Corp.*, a third-party tortfeasor's right to contribution against an employer was capped at the amount of workers' compensation benefits paid or payable to the employee. *Lambertson* upheld precedent concluding that there is no common liability in tort between an employer and third-party tortfeasor under the Workers' Compensation Act. As a work around, *Lambertson* stressed that contribution is a flexible equitable remedy premised on fairness. Despite the lack of common liability in tort, fairness required allowing a third-party tortfeasor to seek contribution against the employer but only up to the amount of benefits paid or payable under the Workers' Compensation Act.

THE CASE

The Minnesota Supreme Court in *Fish v. Ramler Trucking, Inc.*, 935 N.W.2d 738 (Minn. 2019), upheld the *Lambertson* contribution rule despite several law changes since 1977. The employee, Frederick Fish ("Employee"), suffered injuries during an accident while on loan from his employer, Albany Manufacturing ("Employer 1"), to Wells Concrete Productions ("Employer 2"). Employee was thrown from a flatbed truck pulled by a semi-trailer driven by an employee of Ramler Trucking Inc. ("Third-Party Tortfeasor").

Employer 1 paid workers' compensation benefits to and on behalf of Employee. After Employee settled his workers' compensation claim, he commenced a lawsuit against Third-Party Tortfeasor. Third-Party Tortfeasor commenced a third-party action against Employer 1 and Employer 2 for contribution.

Third-Party Tortfeasor settled via a Reverse-*Naig* with Employer 1 and 2. A jury awarded a gross verdict of \$527,340.54 and apportioned fault as follows:

Employee:	5%
Employer 2:	75%
Third-Party Tortfeasor:	20%

The trial court first subtracted damages duplicative of workers' compensation benefits since those claims had been resolved via Reverse-*Naig* settlements. The trial court reduced the resulting net verdict by the Employee's 5% of fault. The trial court then entered a judgment against the Third-Party Tortfeasor for only 20% of the remaining damages.

Employee argued that the trial court erred in failing to enter judgment against the Third-Party Tortfeasor for the entire 95% of the net verdict as required by *Lambertson*. The court of appeals agreed with Employee and remanded for judgment to be entered against Third-Party Tortfeasor for the full jury verdict less the Employee's percentage of fault. The Minnesota Supreme Court affirmed.

THE MINNESOTA SUPREME COURT'S RATIONALE

On appeal, Third-Party Tortfeasor argued that the *Lambertson* procedure was no longer applicable in light of the 2000 amendment to the Workers' Compensation Act, the 2003 amendment to the comparative fault allocation statute, and the 2012 Minnesota Supreme Court's decision in *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68 (Minn. 2012).

In 2000, the legislature amended the Workers' Compensation Act, MINN. STAT. CH. 176, to adopt the *Lambertson* contribution procedure and gave the employer an additional protection: the ability to avoid any contribution exposure by waiving its right to subrogation for workers' compensation benefits before jury selection. Third-Party Tortfeasor argued that when an employer is removed from the case either by settling or waiving and walking, then the case is removed from the Workers' Compensation Act and MINN. STAT. § 604.02, the comparative fault allocation statute, applies. The Minnesota Supreme Court rejected this argument. The 2000 amendment language failed to create common tort liability between an employer and employee.

In 2003, the legislature amended the comparative fault allocation statute limiting joint and several liability to four enumerated exceptions. Third-Party Tortfeasor argued that the 2003 amendments made Minnesota a true comparative fault state whereby a tortfeasor is liable only for its share of fault unless one of the exceptions apply. The Minnesota Supreme Court rejected this argument on two grounds. First, nothing in the language of the amendments changed the precedent that the comparative fault statute does not apply because there is no common tort liability between an employer and tortfeasor. Second, the legislature showed no intent to change the *Lambertson* contribution rule. The legislature knew about *Lambertson* but did not address it in the comparative fault amendments.

The final argument of Third-Party Tortfeasor was that the decision in *Staab v. Diocese of St. Paul* rendered *Lambertson* inapplicable. The plaintiff in *Staab* was injured when she fell out of her wheelchair at the Diocese of St. Paul. She commenced a lawsuit against the Diocese of St. Paul. The plaintiff's husband was added as a potentially at-fault individual on the jury verdict form but was not a party to the lawsuit. The jury apportioned fault 50-50 between the husband and the Diocese of St. Paul. The plaintiff argued that the Diocese of St. Paul should be responsible for all damages because her husband was not a party to the lawsuit. The court of appeals rejected this argument, holding that the comparative fault statute applies to all persons who are parties to the tort regardless of whether the person is a party to the lawsuit. The Diocese was therefore responsible for only 50% of the damages.

Third-Party Tortfeasor argued that *Staab*, like the 2003 amendment to the comparative fault statute, represented a shift toward true comparative fault. The court again rejected this argument and stressed that unlike the common tort liability in *Staab*, there was no common tort liability between Third-Party Tortfeasor and Employer 2. Because there was no common tort liability, *Lambertson* and not the comparative fault statute governed.

THE TAKE-AWAYS

1. *Fish* illustrates that the *Lambertson* contribution procedure will continue to govern the contribution obligations of an employer to a third-party tortfeasor. The analysis in *Fish* indicates that the court will not deviate from the *Lambertson* procedure unless the legislature adopts unambiguous language to the contrary. This likely will not happen any time soon given the legislature in 2000 added language essentially adopting the *Lambertson* procedure. A third-party tortfeasor's right to contribution remains capped at the amount of the workers' compensation subrogation lien unless the contractual indemnity exception, intentional tort, or gross negligence of a co-employee exception applies.
2. *Fish* further answers the longstanding question of how a trial court allocates an employer's fault if the employer is not a party: damages attributable to the fault of the employer—after reduction for redundant workers' compensation benefits paid or payable—are shifted to the third-party tortfeasor.

Had the trial court's decision been upheld, Third-Party Tortfeasor's responsibility pursuant to MINN. STAT. § 604.02, the comparative fault statute, would have been 20% or about \$55,000. Ultimately, Third-Party Tortfeasor's responsibility was 95% or about \$278,000. (These figures are before the appellate courts' post-verdict reductions for the amount of workers' compensation credit.)

3. *Fish* favors the injured employee at the expense of the third-party tortfeasor. The employee can collect against the third-party tortfeasor the entire verdict after subtraction of duplicative workers' compensation benefits and reduction for any fault assigned to the injured employee. The third-party tortfeasor's contribution claim against the employer remains capped at the value of the workers' compensation subrogation, subject to a couple statutory exceptions. *Fish* thus increases the third-party tortfeasor's exposure while essentially maintaining the status quo for the employer.
4. A third-party tortfeasor continues to benefit from apportionment of fault to the injured-employee, and *Fish* may cause a shift in strategy toward that end.

TIPS FOR CLAIMS PROFESSIONALS

If your insured is the third-party tortfeasor, comparative fault does not necessarily reduce exposure in a work-related personal injury to the same extent as in a non-work-related injury. Below is a simplified tutorial on how to determine the increased exposure, if any:

STEP 1: Determine the amount of damages attributable to the employer's fault if MINN. STAT. § 604.02 applied.

$$\text{Predicted Gross Verdict} \times \text{employer's predicted percentage of fault} = \text{Standard MINN. STAT. § 604.02 Contribution Amount}$$

STEP 2: Determine the contribution exposure for the employer pursuant to MINN. STAT. § 176.061 (i.e. the value of the workers' compensation subrogation claim).

The employer's maximum contribution amount is the amount the workers' compensation insurer or self-insured employer is able to recover for past benefits and future credit pursuant to the statutory formula in MINN. STAT. § 176.061, subdiv. 6.

A user friendly calculator is available at:
<https://ereporting.wcra.biz/calculators/SubroCalc.aspx>.

Not all cases warrant consideration of future benefits. For example, the employee may have closed out all or some future benefits via a workers' compensation stipulation for settlement or completed treatment. In these cases, future workers' compensation benefits are not considered in determining the maximum contribution amount under MINN. STAT. § 176.061; the maximum contribution amount will be just past benefits pad, excluding attorneys' fees.

STEP 3: Determine the third-party tortfeasor's potential increased exposure.

Step 1		Step 2		
Standard MINN. STAT. § 604.02 Contribution Amount	--	Work-Related Injury MINN. STAT. § 176.061 Contribution Amount	=	third-party tortfeasor's predicted increased exposure

STEP 4: Do any of the exceptions to the contribution limitations in MINN. STAT. § 176.061, apply?

Exception 1: Contractual Indemnification.

- The employer and third-party defendant had a contractual relationship when the injury event occurred.
- The contract contains an indemnification provision whereby the employer agrees to indemnify the third-party tortfeasor for damages caused by the negligence/fault of the employer or its employees.
- The indemnification provision is enforceable under Minnesota law.
- The contract containing the indemnification provision was signed before the date of injury.

If the answer to all the above is yes, then the contractual exception may apply to render the contribution limitations in MINN. STAT. § 176.061 inapplicable.

Exception 2: Intentional Tort by Employer

- The employer committed an intentional tort such as assault.
- The employer harbored a conscious and deliberate intent to injure the employee.

If the answer to all the above is yes, then the intentional tort by the employer exception may apply to render the contribution limitations in MINN. STAT. § 176.061 inapplicable.

Exception 3: Gross Negligence or Intentional Tort of Co-Employee

- The co-employee took or instructed another to take a direct action toward the injured employee.
- The act was outside the course and scope of employment.
- The act was grossly negligent or intentional.

If the answer to all the above is yes, then the gross negligence or intentional tort by a co-employee exception may apply to render the contribution limitations in MINN. STAT. § 176.061 inapplicable.