

2002

Civil Procedure—Discouraging Declaratory Actions in Minnesota—the Res Judicata Effect of Declaratory Judgments in Light of *State v. Joseph*

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**CIVIL PROCEDURE—DISCOURAGING DECLARATORY
ACTIONS IN MINNESOTA—THE RES JUDICATA EFFECT
OF DECLARATORY JUDGMENTS IN LIGHT OF
*STATE V. JOSEPH***

Ryan R. Dreyer[†]

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I. INTRODUCTION

Declaratory judgments¹ and res judicata² share the common goal of judicial efficiency.³ The two doctrines are brought into conflict, however, when declaratory judgments are given preclusive effect in subsequent litigation.⁴ To advance fairness and maintain efficiency,⁵ the proper preclusive effect of declaratory judgments must be determined with regard to current legal theories and widely held policy positions. In its recent decision of *State v. Joseph*,⁶ the Minnesota Supreme Court followed the same path it carved out in its 1965 decision of *Howe v. Nelson*.⁷ The court had the opportunity to reevaluate its position⁸ in light of developments since *Howe*⁹ and adopt a litigant-friendly rule. Instead, the court made the same mistake it made in *Howe*, by ignoring changes in the Restatement of Judgments, failing to consider what other courts have done, and applying a broad view of res judicata. In so doing,

1. BLACK'S LAW DICTIONARY 846 (7th ed. 1999) (defining *declaratory judgment* as "[a] binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement").

2. Literally, "a thing adjudicated." A DICTIONARY OF MODERN LEGAL USAGE 763 (2d ed. 1995); BLACK'S, *supra* note 1, at 1312 (defining *res judicata* as "1. An issue that has been definitively settled by judicial decision. 2. An affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been . . . raised in the first suit").

3. In the case of declaratory actions, efficiency is afforded to litigants who are able to narrow the issues of a controversy, or declare the rights and duties of a legal relationship before they are interfered with or breached, respectively. EDWIN BORCHARD, DECLARATORY JUDGMENTS 55-56 (2d ed. 1941). See MINN. STAT. § 555.01 (2001) (stating "courts . . . shall have power to declare rights, status, and other legal relations"). In terms of res judicata, eliminating piecemeal litigations, multiple lawsuits, and wasteful litigations increases judicial efficiency. *Wilson v. Comm'r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000).

4. Elizabeth L. Hisserich, *The Collision of Declaratory Judgments and Res Judicata*, 48 UCLA L. REV. 159, 182 (2000).

5. *Lyons v. Westinghouse Elec. Corp.*, 222 F.2d 184, 189 (2d Cir. 1955) (Hand, J.) ("[I]t appears to us that the doctrine [of res judicata] . . . must be treated as a compromise between two conflicting interests: the convenience of avoiding a multiplicity of suits and the adequacy of the remedies afforded for conceded wrongs.").

6. 636 N.W.2d 322 (Minn. 2001).

7. 271 Minn. 296, 135 N.W.2d 687 (1965).

8. See discussion *infra* part III.

9. These developments include a clarification in the Restatement, see *infra* Part II.C., the Eighth Circuit's decision in *Minneapolis Auto Parts Co. v. City of Minneapolis*, 739 F.2d 408 (8th Cir. 1984) (applying Minnesota law), and the increasing number of jurisdictions applying issue preclusion to declaratory judgments, see *infra* Part V.B.

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the court limited the usefulness of declaratory actions in Minnesota.¹⁰

This case note considers how the Court's recent decision in *Joseph* continued the unfortunate practice of giving declaratory judgments claim preclusive effect in Minnesota jurisprudence. Part II analyzes the doctrines of res judicata and declaratory judgments in general.¹¹ Part III analyzes Minnesota's experience with the two doctrines.¹² Part IV explains the significant facts¹³ and the court's holding in *Joseph*.¹⁴ Part V analyzes the collision of res judicata and declaratory judgments and argues that the proper res judicata limit of declaratory actions is issue preclusion.¹⁵ Part V also criticizes the Minnesota Supreme Court for failing to consider new developments in the law and establish a new, more workable precedent.¹⁶ Part VI analyzes whether a statute of limitation should apply to declaratory actions,¹⁷ and part VII concludes that issue preclusion is the proper res judicata limit of declaratory judgments.¹⁸

II. BACKGROUND

A. Declaratory Actions

Adjudicating citizens' rights as to each other and society at large is a long-established function of the legal system, with roots in Roman jurisprudence.¹⁹ Far removed from ancient Rome, the Uniform Declaratory Judgment Act standardized this function in the United States and the great majority of states have adopted some version of it.²⁰ Today, parties use declaratory actions to determine their rights, status, and other legal relations.²¹

10. See *infra* Part V.B.

11. See *infra* Part II.

12. See *infra* Part III.

13. See *infra* Part IV.A.

14. See *infra* Part IV.B.

15. See *infra* Part V.B.

16. See *infra* Part V.A.

17. See *infra* Part VI.

18. See *infra* Part VII.

19. BORCHARD, *supra* note 3, at 87-90.

20. 22A AM. JUR. 2D *Declaratory Judgments* § 5 (1988).

21. MINN. STAT. § 555.01 (2002). By declaring the rights, status and relations between parties, declaratory actions serve the following purposes: 1. "afford a speedy and inexpensive method of adjudicating legal disputes"; 2. narrow the

One of the chief merits of declaratory actions is that they represent “a speedy and inexpensive method of adjudicating legal disputes without invoking coercive remedies”²² When appropriate, parties can use declaratory judgments to dispose of issues in the initial stages of dispute before proceeding to full-blown litigation.²³ In this fashion, declaratory suits save litigants time and money by eliminating or reducing costly fishing expeditions. Declaratory judgments also allow parties to quickly (compared with coercive litigation) remove uncertainty and insecurity from legal relations before parties take action that could prove destructive to their interests.²⁴

issues and by so doing dispose of disputes in their initial stages, before they consume precious resources; 3. make it unnecessary to destroy the status quo as a condition to litigation, thereby preventing future litigation; 4. make it unnecessary for a plaintiff to act upon his own interpretation of his rights, thus forbearing from a contested step for fear of liability; 5. clarify, quiet, and stabilize legal relations by removing uncertainty before irretrievable acts have been set in motion; 6. “enable an issue of questioned status or facts on which a whole complex of rights may depend to be expeditiously determined”; 7. “enable interdependent rights involving numerous parties to be settled in a single action”; 8. obtain authoritative guidance and protection against liability to trust administrators; 9. enable a creditor or claimant to establish his or her claim, thereby preventing future injury; 10. enable a debtor to disavow burdens and remove the cloud on his or her rights; 11. “enable an obligor or contractor who maintains time or circumstance have entitled him [or her] to release from his [or her] obligation to sue the obligee for a declaration of release”; 12. “enable a person claiming his [or her] own privilege or immunity or his [or her] adversary’s duty or liability to secure a judicial recognition” without a full-fledged trial; 13. “enable public duties and powers to be established without the cumbersome and technical prerequisites of mandamus, certiorari, injunction, prohibition, or habeas corpus”; and 14. enable a claimant to choose a “mild but adequate” and less harsh form of relief by declaration. Edwin M. Borchard, *The Uniform Declaratory Judgments Act*, 18 MINN. L. REV. 239, 257-60 (1934).

22. *Sherwood Med. Indus., Inc. v. Deknatel, Inc.*, 512 F.2d 724, 729 (8th Cir. 1975) (paraphrasing *Aetna Cas. & Sur. Co. v. Quarles*, 92 F.2d 321, 325 (4th Cir. 1937)). *Aetna Casualty & Surety Co. v. Quarles* analyzed a similar statute based on the Uniform Declaratory Judgment Act and concluded that “The statute . . . meets a real need and should be liberally construed to . . . afford a speedy and inexpensive method of adjudicating legal disputes without invoking the coercive remedies . . . and to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights” 92 F.2d at 325. A declaratory action in Kansas was filed, argued, and decided in a district court, then appealed, argued and decided on appeal, all within one week. *Ward v. Republic County Comm’rs*, 82 P.2d 84, 90 (Kan. 1938).

23. Borchard, *supra* note 21, at 257.

24. For example, parties unsure of their duties or obligations under a contract can seek a judicial declaration clearly announcing the parties’ duties instead of breaching a contract based on one or both of the parties’ interpretation of the contract.

Declaratory actions can also compliment, rather than take the place of, coercive actions.²⁵ A declaratory judgment does not bar or merge a claim for further coercive relief based on the matters declared.²⁶ Instead, declaratory actions allow parties to narrow the issues in dispute to those which merit prolonged discovery and litigation. Then, based on the declaration of the contentious issues, parties may pursue coercive relief to enforce the underlying rights.²⁷

Generally, declaratory actions find their greatest utility in three types of cases: those involving large corporations or government officials who would rely on a mere declaration of the law to obey it,²⁸ those where judicial interpretation allows the parties to avoid breaching a contract or violating a statute,²⁹ and those where a party who is challenged, threatened or endangered initiates proceedings against her tormentor to eliminate the problem with a judicial determination of her rights, privileges, and immunities.³⁰

B. *Res Judicata*

There is some confusion and little uniformity among courts, commentators, and academics regarding the use of the terms *res judicata* and collateral estoppel. “*Res judicata*” is often interchanged with “claim preclusion,” and “collateral estoppel” replaces “issue preclusion” in some contexts.³¹ At the same time,

25. William P.S. Breese, *Atrocities of Declaratory Judgments Law*, 31 MINN. L. REV. 575, 575-91 (1947).

26. See MINN. STAT. § 555.08 (2002) (stating further relief pursuant to a declaratory judgment may be granted if necessary or proper).

27. See *id.*

28. BORCHARD, *supra* note 3, at 279.

29. Used in this way, declaratory actions can help preserve economic and social relations. *Id.* at 280.

30. *Id.*

31. Courts tend to use *res judicata* and collateral estoppel, while the Restatement and some academics use claim and issue preclusion, respectively. Compare *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (using *res judicata* and collateral estoppel) with RESTATEMENT (SECOND) OF JUDGMENTS § 31 (1982) (using claim and issue preclusion) and Allen D. Vestal, *The Constitution and Preclusion/Res Judicata*, 62 MICH. L. REV. 33, 33-34 (1963) (using claim and issue preclusion). The idiom “issue preclusion” appears to have been coined by Allen D. Vestal, an adviser to the American Law Institute during drafting of the Restatement (Second) of Judgments, in his law review article *The Constitution and Preclusion/Res Judicata*. *Id.* at 34, n.7. (stating the term “issue preclusion” had not been used by the court with intent, though the court came close in *Frost v. Frost*, 23 N.Y.S.2d 754, 757 (1940) (“the plaintiff is precluded from litigating the issue now”)).

some authorities consider *res judicata* to encompass both claim preclusion and issue preclusion.³² This note uses “claim preclusion” and “issue preclusion” to refer to the specific doctrines and “*res judicata*” to refer to the overall judicial notion that judgments have preclusive effects on subsequent claims.³³

Res judicata is a doctrine of judicial efficiency that courts apply in part to alleviate crowded dockets and “in order to relieve parties of the burden of relitigating issues already determined in a prior action, [so] that a party may not be ‘twice vexed for the same cause.’”³⁴ In particular, claim preclusion is used to bar subsequent suits predicated on the same cause of action regardless of the issues previously litigated.³⁵ Issue preclusion prevents a party from relitigating a specific issue that was determined in prior litigation if the issue was “necessary and essential” to the former judgment.³⁶ While issue preclusion is narrow and specific, claim preclusion is a broad sword that has more capability to prevent litigation. Although both doctrines reflect courts’ strong disfavor with wasteful lawsuits,³⁷ courts use them cautiously so as not to deprive litigants of their day in court.³⁸

C. *The Collision of Res Judicata and Declaratory Judgments*

Declaratory relief is an alternative remedy³⁹ available for use in

32. See BLACK’S, *supra* note 2; RESTATEMENT, *supra* note 31, reporter’s note. E.H. Schopler, Annotation, *Extent to Which Principles of Res Judicata are Applicable to Judgments in Actions for Declaratory Relief*, 10 A.L.R.2d 782, 782-83 (1950).

33. In other words, the article uses “*res judicata*” to encompass both “claim preclusion” and “issue preclusion.”

34. *Beutz v. A. O. Smith Harvestore Prods., Inc.*, 431 N.W.2d 528, 531 (Minn. 1988) (quoting *Shimp v. Sederstrom*, 305 Minn. 267, 270, 233 N.W.2d 292, 294 (1975)).

35. *Hauser v. Mealey*, 263 N.W.2d 803, 806 (Minn. 1978).

36. *Ellis v. Minneapolis Comm’n on Civil Rights*, 319 N.W.2d 702, 704 (Minn. 1982) (quoting 1 B.J. MOORE & T. CURRIER, MOORE’S FEDERAL PRACTICE ¶ 0.433[1] (2d ed. 1948)).

37. *Wilson v. Comm’r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000).

38. See *Brown v. Felsen*, 442 U.S. 127, 132 (1979) (“[R]es judicata may govern grounds and defenses not previously litigated, however, it blockades unexplored paths that may lead to truth. For the sake of repose, *res judicata* shields the fraud and the cheat as well as the honest person. It therefore is to be invoked only after careful inquiry.”). See also *United States v. Silliman*, 167 F.2d 607, 614 (3d Cir. 1948) (“Such a rule of public policy must be watched in its application lest a blind adherence to it tend to defeat the even firmer established policy of giving every litigant a full and fair day in court.”).

39. See Breese, *supra* note 25, at 575.

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resolving disputes or potential disputes⁴⁰ in a fashion that is faster, cheaper, and less harsh than coercive relief.⁴¹ The doctrine of res judicata curtails litigants' ability to seek judicial redress of a dispute.⁴² The two doctrines collide when res judicata prohibits plaintiffs from seeking coercive relief because of a prior declaratory judgment. This collision forces the issue: What is the proper preclusive effect of a declaratory judgment? The decision is an important one—too much preclusive effect and the use of declaratory actions is frustrated; too little preclusive effect and declaratory actions become futile and unavailing.

State courts, including Minnesota's,⁴³ have historically turned to the Restatement of Judgments to help determine the proper res judicata limit of a declaratory judgment.⁴⁴ Unfortunately, the first Restatement was not particularly helpful; section 77 contained the following vague suggestion for the res judicata effect of a declaratory judgment: "Where an action is brought to obtain a declaration . . . a final and valid judgment . . . is binding between the parties in subsequent actions."⁴⁵ The comment describes a declaratory action as the request for a judicial declaration rather than the promotion of a claim.⁴⁶ In short, the first Restatement of Judgments failed to overtly specify the proper preclusive effect for declaratory judgments. Nonetheless, some courts have read the vague language of section 77 to suggest that claim preclusion was the proper res judicata limit of a declaratory judgment.⁴⁷

40. Although the constitutional requirement of justiciability generally requires genuine or present controversy, this requirement is viewed leniently in actions for declaratory judgment and is satisfied if there is controversy of sufficient immediacy and reality to warrant issuance of judgment. *Rice Lake Contracting Corp. v. Rust Env't and Infrastructure, Inc.*, 549 N.W.2d 96, 99 (Minn. Ct. App. 1996).

41. RESTATEMENT (SECOND) OF JUDGMENTS § 33 cmt. c (1980) ("A declaratory action is intended to provide a remedy that is simpler and less harsh than coercive relief.").

42. *See supra* part II.B.

43. *Minneapolis Auto Parts Co. v. City of Minneapolis*, 739 F.2d 408, 410 (8th Cir. 1984); *Howe v. Nelson*, 271 Minn. 296, 301, 135 N.W.2d 687, 691-92 (1965).

44. *See Hisserich, supra* note 4, at 173-74 (enumerating twenty-five different jurisdictions in the United States that have analyzed and cited section 33 of the Restatement (Second) of Judgments).

45. RESTATEMENT OF JUDGMENTS § 77 (1942).

46. *Id.* at § 77 cmt. b.

47. *See, e.g., C.F. & I. Steel Corp. v. Charnes*, 637 P.2d 324, 328 (Co. 1981); *Slattery v. Maykut*, 405 A.2d 76, 82 (Ct. 1978); *Herd v. Lyttle*, 222 S.W.2d 834, 837 (Ky. 1949); *Howe*, 271 Minn. at 296, 135 N.W.2d at 691-92; *Davlee Const. Corp. v. Brooks*, 188 N.Y.S.2d 847, 852 (N.Y. Sup. Ct. 1959); *Great N. R.R. Co. v. Mustad*,

Section 33 of the Restatement (Second) of Judgments improved the situation by expressly adopting issue preclusion as the *res judicata* limit of declaratory judgments.⁴⁸ In the past two decades, an increasing number of state courts have determined that issue preclusion is the proper preclusive effect of declaratory judgment actions. Now, eighteen jurisdictions have adopted issue preclusion as the *res judicata* limit of a declaratory judgment.⁴⁹

III. DECLARATORY JUDGMENTS IN MINNESOTA

Minnesota became the eighteenth American state to adopt the Uniform Declaratory Judgment Act in 1933,⁵⁰ authorizing Minnesota courts to entertain declaratory actions.⁵¹ Since then, declaratory actions have been used continuously by Minnesota litigants to simplify and shorten lawsuits, thereby conserving precious resources.

The Minnesota Supreme Court first analyzed the *res judicata* effect of a declaratory judgment in its 1965 decision of *Howe v. Nelson*.⁵² The court applied claim preclusion to a declaratory judgment, holding that “the *res judicata* effect of a judgment in a declaratory judgment action is essentially no different from the *res judicata* effect of any other judgment.”⁵³ The Eighth Circuit Court of Appeals made a different choice, but avoided direct conflict with the Minnesota high court in *Minneapolis Auto Parts Co., Inc. v. City of Minneapolis*.⁵⁴ The Eighth Circuit simply noted that the Restatement (Second) of Judgments is at odds with the Minnesota

33 N.W.2d 436, 441 (N.D. 1948).

48. RESTATEMENT (SECOND) OF JUDGMENTS § 33 (1980) (stating that in accordance with the rules of issue preclusion, a valid and final judgment in a declaratory action is conclusive in a subsequent action between the parties as to any issues actually litigated).

49. See *infra* Part V.B.

50. Borchard, *supra* note 21, at 239.

51. MINN. STAT. § 555.01 (2002) (“Courts . . . shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. . . . The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.”).

52. 271 Minn. 296, 135 N.W.2d 687 (1965).

53. *Id.* at 301, 135 N.W.2d at 691. The court erred in *Howe* because a declaratory action does not seek redress of a claim; instead it seeks the determination of rights, status, and other legal relations between parties. Compare MINN. STAT. § 555.01 (1965) with RESTATEMENT OF JUDGMENTS § 77 (1942).

54. 739 F.2d 408 (8th Cir. 1984) (applying Minnesota law).

Supreme Court's decision in *Howe*.⁵⁵ The Eighth Circuit found that the Restatement (Second) limits the effects of res judicata in pure declaratory actions⁵⁶ to an issue preclusive effect.⁵⁷ Thus, leading up to *Joseph*, Minnesota courts were applying claim preclusion to declaratory judgments, while the Eighth Circuit's case law held that issue preclusion was the proper limit.⁵⁸

IV. THE JOSEPH DECISION

A. Facts & Procedural History

On November 27, 1992, Barbara and James Joseph (the Josephs) struck Minnesota State Highway Patrol Trooper William F. Henry (Henry) with their minivan.⁵⁹ Henry was severely injured.⁶⁰ The Josephs, who worked as clergy for Two Harbors Gospel Tabernacle (Tabernacle), initially claimed they were on church business at the time of the accident.⁶¹ Royal Insurance Company

55. Compare *id.* at 410 (stating the Restatement (Second) of Judgments restricts the preclusive effect of a declaratory judgment to matters declared) with *Howe*, 271 Minn. at 301, 135 N.W.2d at 691 (stating the res judicata effect of a declaratory judgment is the same as the res judicata effect of any other judgment).

56. *Minneapolis Auto Parts Co.*, 739 F.2d at 410 (applying Minnesota law). "Pure" declaratory actions do not seek coercive relief or both coercive and declaratory relief. Courts apply the declaratory judgment exception to res judicata solely to pure declaratory actions. *Stericycle, Inc. v. City of Delavan*, 120 F.3d 657, 659–60 (7th Cir. 1997) (applying Wisconsin state law); *Cimasi v. City of Fenton*, 838 F.2d 298, 299 (8th Cir. 1988) (applying Missouri law); *Mandarino v. Pollard*, 718 F.2d 845, 847–49 (7th Cir. 1983) (applying Illinois law); *State v. Smith*, 720 P.2d 40, 41 n.2 (Alaska 1986); *Mycogan Corp. v. Monsato Co.*, 51 P.3d 297 (Cal. 2002).

57. RESTATEMENT (SECOND) OF JUDGMENTS § 33 (1980):

A valid and final judgment in an action brought to declare rights or other legal relations . . . is conclusive in a subsequent action between them as to the matters declared, and, *in accordance with the rules of issue preclusion, as to any issues actually litigated* by them and determined in the action.

Id. (emphasis added); "[A] declaratory action determines only what it actually decides and does not have a claim preclusive effect on other contentions that might have been advanced." *Id.* at cmt. c. But see *Fournier v. Ill. Cas. Co.*, 391 N.W.2d 258, 260 (Iowa 1986) (analyzing section 33 of the Restatement (Second) of Judgments and applying claim preclusion to a declaratory judgment).

58. Compare *N. Star Steel Co. v. MidAmerican Energy Holdings Co.*, 184 F.3d 732, 737 (8th Cir. 1999); *Minneapolis Auto Parts Co. v. City of Minneapolis*, 739 F.2d 408, 410 (8th Cir. 1984); with *Howe*, 271 Minn. at 301, 135 N.W.2d at 691.

59. *State v. Joseph*, 636 N.W.2d 322, 324 (Minn. 2001).

60. *Id.*

61. *Id.*

(Royal) had issued the Josephs' personal insurance policy.⁶² Tabernacle maintained an excess liability policy⁶³ with Church Mutual Insurance Company (Mutual) covering employees of Tabernacle acting within the scope of their employment.⁶⁴ After the accident, Mutual received three investigative reports indicating the Josephs were on church business at the time of the accident.⁶⁵

In 1993, Henry sued the Josephs for his injuries.⁶⁶ The Josephs and Royal settled the suit in 1994 for \$250,000, but the agreement reserved satisfaction of the judgment to the Mutual excess liability policy limit.⁶⁷ Royal tendered defense of the suit to Mutual who accepted the suit, but reserved its right to deny coverage based on the validity of the claim.⁶⁸ Sometime before October 30, 1995, the Josephs testified individually that they were on church business at the time of the accident.⁶⁹ Later, on November 2, 1995, Mr. Joseph sent a statement to Mutual indicating that at the time of the accident the Josephs were not on church business.⁷⁰ The following day, Mutual notified the Josephs they were denying coverage.⁷¹ Almost a week later, on November 9, 1995, the jury delivered a verdict against the Josephs,⁷² which they appealed.⁷³ The court of appeals reversed in part and remanded the issue of liability.⁷⁴ The district court granted summary judgment against the Josephs who again appealed.⁷⁵ The court of appeals reversed and remanded.⁷⁶

62. *Id.*

63. The Church Mutual policy provided: "This insurance shall be excess insurance over any other valid and collectable insurance for bodily injury liability, property damage liability and for medical payments." Brief for Appellants at A-15, *Joseph*, 636 N.W.2d 322 (No. C2-00-1364).

64. *Id.* The Church Mutual policy provides that the following persons are insured: "Any person who is an officer, clergyman or employee of the named insured, but only while acting in the performance of and within the scope of his duties as such." *Id.*

65. *Joseph*, 636 N.W.2d at 324.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 325.

70. *Id.*

71. *Id.*

72. The jury found Barbara Mae Joseph completely negligent in the causation of Henry's injuries and awarded Henry over \$3,000,000.00 in damages. Brief for Appellants at 3, *Joseph*, 636 N.W.2d 322 (No.C2-00-1364).

73. *Joseph*, 636 N.W.2d at 325.

74. *Id.*

75. *Id.*

76. *Id.*

On remand, a second trial on the issue of liability resulted in another verdict favoring Henry.⁷⁷ No appeal followed.⁷⁸

On October 27, 1999, Mutual initiated a declaratory lawsuit to establish that the Josephs were not on church business at the time of the accident.⁷⁹ On February 16, 2000 the Washington County District Court dismissed the suit as time-barred, holding the six-year contracts statute of limitations had run.⁸⁰ Mutual did not appeal the judgment, and the judgment became final in April of 2000.⁸¹

On October 29, 1999, the state initiated a garnishment proceeding naming Mutual as the garnishee and the Josephs as debtors.⁸² Mutual raised an affirmative defense claiming the Josephs were not on church business and were therefore not covered under the Tabernacle policy.⁸³ Henry intervened in the proceeding, asserting res judicata barred Mutual from relitigating the scope of employment issue.⁸⁴ On cross motions for summary judgment, the Chisago County District Court held that the declaratory suit collaterally estopped Mutual from relitigating the scope of employment issue.⁸⁵ Mutual appealed and the court of appeals reversed, holding the declaratory suit did not collaterally estop Mutual from raising the defense.⁸⁶ The court of appeals reasoned that the declaratory action never reached the merits of the case, and therefore, Mutual never had the opportunity to present evidence on the scope of employment issue.⁸⁷

B. *The Minnesota Supreme Court's Holding*

In deciding *Joseph*,⁸⁸ the Supreme Court applied principles of res judicata rather than claim or issue preclusion.⁸⁹ The court held

77. *Id.*

78. *Id.*

79. *Id.*

80. *Joseph*, 636 N.W.2d at 325 (citing MINN. STAT. § 541.05 subd. 1 (2001)).

81. *Id.* The Minnesota Supreme Court was particularly unsympathetic to Mutual's position because Mutual failed to appeal the Washington County declaratory judgment. *Id.* at 329 (stating Mutual had both the right and the opportunity to appeal).

82. *Id.* at 325.

83. *Id.*

84. *Id.* at 326.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at 327.

that *res judicata*:

- operates as an absolute bar to a subsequent claim when:
- (1) the earlier claim involved the same claim for relief;
 - (2) the earlier claim involved the same parties or their privies;
 - (3) there was a final judgment on the merits; and
 - (4) the estopped party had a full and fair opportunity to litigate the matter.⁹⁰

The court held that a declaratory judgment bars the relitigation of all litigated claims as well as claims that could have been litigated.⁹¹

Specifically, the court found: (1) Mutual's scope of employment defense was identical to the issue in the declaratory action;⁹² (2) the parties were the same in both actions;⁹³ and (3) although the Washington County District Court dismissed Mutual's declaratory complaint on a Rule 12 motion, the judgment was on the merits.⁹⁴ Finally, the court concluded that Mutual had "a full and fair opportunity" to litigate the coverage defense in the Washington County declaratory action.⁹⁵

V. ANALYSIS OF THE *JOSEPH* DECISION

In *Joseph*, the Minnesota Supreme Court affirmed its 1965 decision of *Howe*—holding claim preclusion as the *res judicata* limit of a declaratory judgment⁹⁶—despite the clarification provided by the Restatement (Second) of Judgments in 1982.

A. *Failure to Consider New Res Judicata Developments in the Law*

Deciding *Joseph*, the court failed to analyze section 33 of the Restatement (Second) of Judgments.⁹⁷ The Restatement limits the *res judicata* effect of declaratory judgments to issue preclusion.⁹⁸

90. *Id.*

91. *Id.* (citing *Wilson v. Comm'r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000); *Care Inst., Inc.-Roseville v. County of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000)).

92. *Id.*

93. *Id.*

94. *Id.* at 328.

95. *Id.* (quoting *Sil-Flo, Inc. v. SFHC, Inc.* 917 F.2d 1507, 1521 (10th Cir. 1990)).

96. *Id.* at 326 n.1 (stating *res judicata* applies to all claims actually litigated as well as to all claims that could have been). *Id.* at 327.

97. *State v. Joseph*, 636 N.W.2d 322 (Minn. 2001).

98. *See supra* Part II.C.

The *Joseph* opinion did not refer to the Restatement or contain a discussion of the Minnesota Supreme Court's rationale for adopting claim preclusion.⁹⁹ In contrast, when the Eighth Circuit addressed the same issue in *Minneapolis Auto Parts Co. v. City of Minneapolis*,¹⁰⁰ that court closely analyzed section 33 of the Restatement (Second) of Judgments and provided an in depth analysis of the proper res judicata limit.¹⁰¹

The Minnesota Supreme Court's most recent analysis of the proper res judicata limit of declaratory judgments was *Howe v. Nelson*.¹⁰² The similarity of the facts between *Joseph* and *Howe*, and the *Joseph* court's reliance on *Howe* exacerbate the lack of consideration of the Restatement (Second) and the decisions of other jurisdictions.¹⁰³ The *Howe* court meticulously analyzed the state of res judicata law as it pertained to declaratory judgments at the time by analyzing an exhaustive list of authorities including a law review,¹⁰⁴ a treatise,¹⁰⁵ the Restatement,¹⁰⁶ the American Law Reports,¹⁰⁷ and eight decisions from other jurisdictions.¹⁰⁸ The *Joseph* court cited only one treatise and no out-of-state cases.¹⁰⁹ In

99. 636 N.W.2d 322.

100. 739 F.2d 408 (8th Cir. 1984).

101. *Id.* at 410. The Eighth Circuit found *Minneapolis Auto* distinguishable from Minnesota precedent and section 33. *Id.*

102. 271 Minn. 296, 135 N.W.2d 687 (1965).

103. Although the *Joseph* court only cited *Howe* three times (see *Joseph*, 636 N.W.2d at 327), the facts of *Howe* are remarkably similar to *Joseph*. Compare *Joseph*, 636 N.W.2d 322, with *Howe*, 271 Minn. 296, 135 N.W.2d 687. Both cases involve a car accident, both contained an initial declaratory suit instituted by an insurance company construing automobile policies, both spawned from a personal injury suit against the insured, and both involved a subsequent garnishment suit.

104. *Howe*, 271 Minn. at 303, 135 N.W.2d at 692 n.14 (citing *Developments in the Law – Declaratory Judgments*, 62 HARV. L. REV. 787 (1949)).

105. *Howe*, 271 Minn. 296, 303, 135 N.W.2d 687, 693 n.15 (1965) (citing BORCHARD, *supra* note 3).

106. *Id.* at 301-02, 135 N.W.2d at 692 (analyzing section 77, comment b of the original Restatement of Judgments and concluding that the comment urges a salutary caution in granting the effect of res judicata to declaratory judgments; the court, however, applied claim preclusion to the declaratory judgment at issue). Section 33 of the Restatement (Second) of Judgments reaffirms section 77 of the original Restatement of Judgments. RESTATEMENT (SECOND) OF JUDGMENTS § 33 reporter's note (1982). Section 33 went further and added language expressly adopting issue preclusion as the res judicata limit of a declaratory judgment. RESTATEMENT (SECOND) OF JUDGMENTS § 33 (1982).

107. *Howe*, 271 Minn. at 301, 135 N.W.2d at 692 (citing E. H. Schopler, Annotation, *Extent to Which Principles of Res Judicata are Applicable to Judgments in Actions for Declaratory Relief*, 10 A.L.R.2d 782 (1950)).

108. See generally *id.*

109. See generally *State v. Joseph*, 636 N.W.2d 322 (Minn. 2001).

contrast to Minnesota, other state courts have looked far and wide in search of the proper *res judicata* limit. For instance, in *Aerojet-Gen. Corp. v. Am. Excess Ins. Co.*, California relied on the decisions of seven other jurisdictions¹¹⁰ and in *Cromer v. Sefton*, Indiana cited ten out-of-state cases to make a proper analysis.¹¹¹

Short of legislative action, the final determination of the *res judicata* limit to apply to declaratory judgments belongs to the Minnesota Supreme Court. But in *Joseph*, the court should have analyzed the change in the Restatement, the decisions of other jurisdictions and explained its detour from the norm.

B. Issue Preclusion – Why it is the Better Choice

The Minnesota Supreme Court should have joined the 18 other state courts that have recognized issue preclusion as the *res judicata* limit of a declaratory judgment.¹¹² Nationally, thirteen state courts have hewed to section 33 of the Restatement (Second),¹¹³ five have adopted issue preclusion without analyzing the Restatement,¹¹⁴ five (including Minnesota) have adopted claim preclusion,¹¹⁵ and twenty-seven states have not squarely addressed the issue. By adopting claim preclusion, the Minnesota Supreme

110. 117 Cal.Rptr.2d 427, 435-42 (Cal. Ct. App. 2002).

111. 471 N.E.2d 700, 704 (Ind. Ct. App. 1984).

112. RESTATEMENT (SECOND) OF JUDGMENTS §§ 33, 77 (1982); 22A AM. JUR. 2D *Declaratory Judgments* §§ 239-240 (1988).

113. *Jackinsky v. Jackinsky*, 894 P.2d 650, 656 (Alaska 1995); *Aerojet-Gen. Corp. v. Am. Excess Ins. Co.*, 117 Cal. Rptr. 2d 427, 441 (Cal. Ct. App. 2002); *Eason v. Bd. of County Comm'rs*, 961 P.2d 537, 540 (Colo. Ct. App. 1997); *N. Shore Realty Corp. v. Gallaher*, 99 So. 2d 255, 257 (Fla. Dist. Ct. App. 1957); *Cromer v. Sefton*, 471 N.E.2d 700, 706 (Ind. Ct. App. 1984); *Bankers & Shippers Ins. Co. of N.Y. v. Electro Enters., Inc.*, 415 A.2d 278, 284 (Md. 1980); *Boyd v. Jamaica Plain Coop. Bank*, 386 N.E.2d 775, 779 (Mass. App. Ct. 1979); *Radkay v. Confalone*, 575 A.2d 355, 357 (N.H. 1990); *State ex rel. Shemo v. Mayfield Heights*, 765 N.E.2d 345, 355 (Ohio 2002); *Okla. Alcoholic Beverage Control Bd. v. Cent. Liquor Co.*, 421 P.2d 244, 247 (Okla. 1966); *Robison v. Asbill*, 492 S.E.2d 400, 401 (S.C. Ct. App. 1997); *Carver v. Heikkila*, 465 N.W.2d 183, 186 (S.D. 1991); *Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998);

114. *Salvatore v. Ohio Cas. Ins. Co.*, 30 Conn. L. Rptr. 39 (Conn. Super. Ct. 2001); *Warwick v. Pearl River Valley Water Supply Dist.*, 271 So. 2d 94, 96 (Miss. 1972); *Ganaway v. Shelter Mut. Ins. Co.*, 795 S.W.2d 554, 562 (Mo. Ct. App. 1990); *Donnelly v. United Fruit Co.*, 183 A.2d 415, 419 (N.J. Super. Ct. App. Div. 1962); *In re Cox*, 388 S.E.2d 199, 201 (N.C. Ct. App. 1990).

115. *Smith v. Barfield*, 276 S.E.2d 899 (Ga. Ct. App. 1981); *Downen v. Country Mut. Ins. Co.* 537 N.E.2d 445 (Ill. App. Ct. 1989); *Fournier v. Ill. Cas. Co.*, 391 N.W.2d 258 (Iowa 1986); *Hoffman v. Auto Club Ins. Ass'n*, 535 N.W.2d 529 (Mich. Ct. App. 1995); *State v. Joseph*, 636 N.W.2d 322 (Minn. 2001).

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Court significantly limited the efficacy of declaratory actions in Minnesota.¹¹⁶

Claim preclusion is too preclusive for declaratory judgments and preserving claim preclusion as the *res judicata* limit of declaratory judgments will have a “chilling effect”¹¹⁷ on their use.¹¹⁸ Attorneys will advise their clients to avoid using declaratory actions to ensure they do not lose any claims they may have. Thus, the time and money saving advantages of declaratory actions are lost to judicial efficiency and, as a result, lawsuits will be more numerous and broader in scope.¹¹⁹

It is helpful and illustrative to apply these doctrines to an elementary example in contract law. Parties to a contract can seek a declaration of their rights and duties under the agreement pursuant to a perceived conflict.¹²⁰ With claim preclusion as the

116. Declaratory actions are an important part of the legal landscape in Minnesota. See Borchard, *supra* note 21, at 257-60 (listing the purposes of declaratory judgments). As previously noted, litigants can use declaratory actions to calm their senses and act on an informed basis. *Id.* at 258 (stating declaratory judgments remove uncertainty and insecurity from legal relations thereby clarifying, quieting and stabilizing legal relationships). Properly used, declaratory actions save litigants precious time and money by derailing controversies before damages occur; they also help litigants avoid the attorneys’ fees consonant with full-fledged coercive litigations. See E. Edelmann & Co. v. Triple-A Specialty Co., 88 F.2d 852, 854 (7th Cir. 1937) (stating that Congress’s intent was to circumvent the “accrual of avoidable damages to one not certain of his rights and to afford him an early adjudication without waiting until his adversary should see fit to begin suit, after damage had accrued”). See also Hisserich, *supra* note 4, at 160 (stating that because declaratory actions can be brought earlier than coercive actions and before damages accrue, they “serve a useful protective function by allowing the parties to know their responsibilities to one another before they are violated. By focusing on a specific issue at contention between the parties, the court can resolve the problem relatively quickly, avoiding the expense and strain of full-scale litigation”). Note that in addition to the savings litigants realize, declaratory actions conserve court resources by discouraging the use of more time consuming coercive actions. *Id.*

117. BLACK’S, *supra* note 1, at 233 (defining *chilling effect* as “the result when any practice is discouraged”). See Bartnicki v. Vopper, 532 U.S. 514, 554 (2001) (using “chilling effect” to refer to the effect public disclosure of private conversations will have on private speech by individuals); Mitchell v. Helms, 530 U.S. 793, 913 n.30 (2000) (using “chilling effect” to refer to the effect government entanglement has on the mission of a church parish).

118. RESTATEMENT (SECOND) OF JUDGMENTS § 33 cmt. c (1982) (“Application of bar might also be undesirable because the risk of bar would discourage declaratory actions in the preclaim situation or at least discourage a possibly useful even though partial presentation of the controversy.”).

119. Hisserich, *supra* note 4, at 182 (stating that if declaratory judgments receive full claim preclusive effect, the court system will be further burdened).

120. MINN. STAT. § 555.01 (2002); Thuma v. Kroschel, 506 N.W.2d 14, 21

effect of the declaratory judgment, the judgment will bar any further declaration on the contract in the future.¹²¹ This result encourages the parties to argue every clause of the agreement during the declaratory action, consuming more time, money and energy than necessary. To avoid this result, parties will refrain from bringing a declaratory action that would otherwise quickly and efficiently resolve at least some issues. Instead, parties are forced to live with uncertainty that could be avoided.¹²² On the other hand, if a party does seek and obtain a declaratory judgment, application of claim preclusion to the judgment requires a party to breach the contract before further relief could be sought.¹²³ This breach will cause damages and escalate costs.¹²⁴

The application of issue preclusion yields a better result. Applying issue preclusion to the contract hypothetical, a declaratory action does not force the parties to litigate every issue on the contract at one time. Thus, they are free to seek guidance on any crucial issue they are uncertain about, consuming only the time and money absolutely necessary while eliminating the uncertainty declaratory judgments are designed to end.¹²⁵ For the parties, obtaining an efficient declaration of the contract at this stage would avoid individual interpretations and the possible accompanying damages that flow from a breach of contract. In this hypothetical, the parties are able to save time and money by utilizing the declaratory action. Expanding the effect of declaratory judgments to claim preclusion will result in reluctant use of the time and money saving declaratory form of action.¹²⁶

At first glance, it may seem that multiple suits will be reduced

(Minn. Ct. App. 1993).

121. See *Walsh Constr. Co. v. Nat. Union Fire Ins. Co.*, 153 F.3d 830, 833 (7th Cir. 1993) (holding that a declaratory judgment in Illinois bars subsequent litigation on a contract through the operation of claim preclusion).

122. See Borchard, *supra* note 21, at 258 (stating declaratory judgments remove uncertainty and insecurity from legal relations).

123. See MINN. STAT. § 555.08 (2002) (stating further relief pursuant to a declaratory judgment may be granted if necessary or proper).

124. Breach of contract produces one of three types of damages: expectation, reliance, or restitution. RESTATEMENT (SECOND) OF CONTRACTS § 344 (1979). Expectation damages attempt to put a party in the position he/she would have been in had the contract been performed, otherwise known as benefit of the bargain damages. *Id.* Reliance damages compensate for loss occurring as a result of relying on the contract to perform or even prepare to perform. *Id.* Restitution damages restore any benefit conferred on another party. *Id.*

125. See Borchard, *supra* note 21, at 258.

126. Hisserich, *supra* note 4, at 182.

and judicial efficiency will be served by setting claim preclusion as the res judicata limit of declaratory judgments.¹²⁷ However, the benefit is not as great as it may initially appear. Declaratory judgments with vast preclusive effect will encourage litigants to pursue more coercive suits.¹²⁸ In the end, the result may be more full-fledged coercive lawsuits and, consequently, more congested dockets.¹²⁹ Thus, judicial economy will be disserved. Lastly, discouraging declaratory actions dissuades parties from asserting their rights and encourages the reluctance to protect their legal position.¹³⁰

VI. STATUTES OF LIMITATIONS

The clearest and most sweeping effect of the Minnesota Supreme Court's decision in *Joseph* is the affirmation of claim preclusion as the res judicata limit of declaratory judgments. The decision left open other civil procedure issues such as whether statutes of limitation apply to defenses in coercive suits or declaratory actions in general.¹³¹ This section provides an analysis of applying a statute of limitation to declaratory actions.

A. Background

Statutes of limitation limit the amount of time in which a cause of action can be initiated.¹³² They are a compromise between the interest of eliminating stale claims and the interest of deciding all claims on their substantive merits.¹³³ Statutes of limitation are an important tool of public policy helping ensure the accuracy of the

127. *Walsh Constr. Co. of Ill. v. Nat. Union Fire Ins. Co. of Pitt., Pa.*, 153 F.3d 830, 832 (7th Cir. 1993).

128. RESTATEMENT (SECOND) OF JUDGMENTS § 33 cmt. c (stating declaratory actions are simpler and are not as expansive as their full-blown coercive counterparts).

129. *Hisserich*, *supra* note 4, at 163 (arguing that declaratory judgments help reduce some of the strain on an already burdened legal system).

130. *See Lister v. Bd. of Regents*, 240 N.W.2d 610, 624-25 (Wis. 1976) (stating declaratory actions provide a remedy that is anticipatory or preventative in nature).

131. *State v. Joseph*, 636 N.W.2d 322, 326 (Minn. 2001) (stating the court of appeals held that a statute of limitations does not apply to declaratory actions or defenses. The Minnesota Supreme Court did not address either issue).

132. BLACK'S, *supra* note 1, at 1422 (defining *statute of limitations* as "a statute establishing a time limit for suing in a civil case").

133. Tyler T. Ochoa & Andrew J. Wistrich, *The Puzzling Purposes of Statutes of Limitations*, 28 PAC. L.J. 453, 454-55 (1997).

fact-finding process,¹³⁴ the reduction of litigation costs,¹³⁵ the preservation of integrity in the legal system,¹³⁶ and the repose of defendants.¹³⁷ Statutes of limitation are arbitrary; they do not discriminate between just and unjust claims, or avoidable and unavoidable delays.¹³⁸

B. Minnesota

Statutes of limitation have been a mainstay in Minnesota since early statehood.¹³⁹ Neither the Federal Declaratory Judgment Act¹⁴⁰ nor Minnesota's adopted version of the Uniform Declaratory Judgment Act¹⁴¹ address the issue of whether a statute of limitation applies to a declaratory action.¹⁴² Minnesota case law interpreting the act is largely silent.¹⁴³

C. Analysis

The policies furthered by statutes of limitation are not served if declaratory actions can be brought without limitation.¹⁴⁴ Most

134. *Bd. of Regents v. Tomanio*, 446 U.S. 478, 487 (1980) (stating the fact finding process is more reliable if the witness or testimony in question is relatively fresh and therefore there comes a time when even meritorious claims must be barred from litigation).

135. Litigating sooner than later is cheaper because evidence deteriorates and memories fade creating more need for discovery, more documents to be entered into evidence, and more testimony from more witnesses. These costs burden the system as a whole because trial courts must preside over the longer trials and the individual parties who have to pay their attorneys to present more evidence and examine more witnesses.

136. Ochoa & Wistrich, *supra* note 133, at 481.

137. *Id.* at 457.

138. *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945).

139. *See, e.g.*, Gen. St. 1849-58 c. 60 §§ 3-9; MINN. STAT. §§ 541.01-541.22 (2002) (stating Chapter 541 is derived from public statute chapter 60 of 1858). Minnesota became a state when Congress passed the Convention Act of Legislative Assembly on May 23, 1857.

140. 28 U.S.C. §§ 2201, 2202 (2002).

141. MINN. STAT. §§ 555.01-555.16 (2002).

142. *See generally* 28 U.S.C. §§ 2201, 2202 (2002); MINN. STAT. §§ 555.01-555.16 (2002).

143. *See generally* MINN. STAT. §§ 555.01-555.16 (2002). *But see* *Fryberger v. Township of Fredenberg*, 428 N.W.2d 601, 605 (Minn. Ct. App. 1988) (holding that declaratory judgments in Minnesota are not subject to statutes of limitation); *State v. Joseph*, 622 N.W.2d 358, 362 (Minn. Ct. App. 2001) (holding that absent a statutory mandate, declaratory actions are not barred by statutes of limitations) *rev'd on other grounds by State v. Joseph*, 636 N.W.2d 322 (Minn. 2001).

144. *See* Ochoa & Wistrich, *supra* note 133 (arguing that statutes of limitations promote repose, minimize deterioration of evidence, place defendants and

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notably, courts could not escape considering and relying upon stale evidence during declaratory actions. Stale evidence obscures the accurate pursuit of justice because memories fade and documents are lost. As a direct result, stale evidence costs litigants considerable time and money tracking down old documents and old witnesses.¹⁴⁵

If statutes of limitation do not apply to declaratory actions, defendants would never be able to relinquish their guard. They would have to be prepared to defend themselves in declaratory actions virtually forever. This, in turn, may cause potential defendants considerable unneeded strain and uncertainty, including unnecessarily increased costs from litigation and liability insurance coverage.

From the standpoint of judicial efficiency, if the underlying claim were beyond the limitations period, a declaratory judgment would have no effect because the plaintiff would not be able to seek further coercive relief, thus wasting the time and money of parties and courts. Legislatures adopted statutes of limitation to eliminate these problems.¹⁴⁶

Minnesota's Declaratory Judgment Act has a possible solution built into it.¹⁴⁷ For instance, Minnesota trial court judges have discretion to refuse a declaratory action if it will not relieve the underlying uncertainty that precipitated the action.¹⁴⁸ Indeed, it may seem straightforward that this discretion would allow trial courts to dismiss declaratory actions based on an underlying claim that had exceeded the limitations period. Nevertheless, without the Minnesota Supreme Court's opinion on this matter, the current state of the law is not clear and, arguably, the decision of the Minnesota Court of Appeals in *State v. Joseph* remains binding precedent.¹⁴⁹

Nearly every state applies statutes of limitation to declaratory

plaintiffs on an equal footing, promote cultural values of diligence, encourage the prompt enforcement of substantive law, avoid retrospective application of contemporary standards, and reduce the volume of litigation. The article concedes that statutes of limitations do not promote adjudication of claims upon their substantive merits nor are they conducive to the vindication of meritorious claims).

145. Ochoa & Wistrich, *supra* note 133, at 480.

146. Ochoa & Wistrich, *supra* note 133, at 454.

147. MINN. STAT. § 555.06 (2002).

148. *Id.*

149. 622 N.W.2d 358, 362 (Minn. Ct. App. 2001) (holding that absent a statutory mandate, declaratory actions are not barred by statutes of limitations).

actions. However, states have taken one of three approaches to determine which statute of limitation applies. The first applies the limitations period applicable to the underlying claim.¹⁵⁰ The second approach uses a statute of limitation that applies to all causes of action not specifically provided for in other statutes.¹⁵¹ The third approach adopts a new statute that covers only declaratory actions.¹⁵²

The most logical approach is to apply the statute of limitation of the underlying claim to bar a declaratory action based on the same issue. Aligning the two limitations periods enhances judicial efficiency because after the statute of limitation lapses, no coercive relief could be provided on the basis of the declaratory judgment. Thus, resources spent in pursuit of the declaratory judgment would be wasted.

In *Joseph*, the Minnesota Supreme Court should have imparted that declaratory actions are subject to the statute of limitation applicable to the underlying cause of action. Doing so would have cleared up any confusion following the court of appeal's decision

150. *Karedes v. Collela*, 740 N.Y.S.2d 526, 529 (2002); *Nash v. MacDonald*, 112 Cal.Rptr. 2d 230, 239 (2001) *rev'd on other grounds*; *W. Gate Vill. Ass'n v. Dubois*, 761 A.2d 1066, 1072 (N.H. 2000); *Allied Investment Corp. v. Jasen*, 716 A.2d 1085, 1094 (Md. App. 1998); *Page v. LeRoux*, 685 N.E.2d 1205, 1207 (Mass. App. Ct. 1997); *Wilson v. Kelley*, 617 A.2d 433, 436 (Conn. 1992); *Brooks v. Dierker*, 552 P.2d 533, 535 (Or. 1976); *Russell v. First York Sav. Co.*, 352 N.W.2d 871, 875 (Neb. 1984); *Taylor v. Lovelace Clinic*, 432 P.2d 816, 818 (N.M. 1967); *Dehoff v. Attorney General*, 564 S.W.2d 361, 363 (Tenn. 1978); *Maynard v. Bd. of Ed. of Wayne County*, 357 S.E.2d 246, 251 (W.Va. 1987); *DeWitt v. Balben*, 718 P.2d 854, 858 (Wyo. 1986).

151. Basically courts adopting this method use a generic statute of limitations as a catchall. *See, e.g.*, *Hollywood Lakes Section Civic Ass'n, Inc. v. City of Hollywood*, 676 So.2d 500, 501 (Fla. Dist. Ct. App. 1996) (rehearing denied August 1, 1996) (construing "[a]ctions other than for recovery of real property shall be commenced . . . [w]ithin four years . . . [including] [a]ny action not specifically provided for in these statutes" to include declaratory actions) (referencing FLA. STAT. ANN. § 95.11 (2002)); *Wagner v. Apollo Gas Co.*, 582 A.2d 364, 366 (Pa. Super. 1990) (construing "the following actions and proceedings must be commenced within four years: . . . [a]n action upon a contract, obligation or liability founded upon a writing not specified in paragraph (7), under seal or otherwise, except an action subject to another limitation specified in this subchapter" to cover a declaratory action on one of the underlying areas of law) (referencing 42 PA. CONS. STAT. § 5525 (2002) (as amended)); *145 Kisco Ave. Corp. v. Dufner Enters.*, 604 N.Y.S.2d 963, 965 (N.Y.A.D. 1993) (construing "[t]he following actions must be commenced within six years: . . . an action for which no limitation is specifically prescribed by law" to include a declaratory action) (referencing N.Y. C.P.L.R. § 213 (2002)). *See also Samuelson v. Alvarado*, 847 S.W.2d 319, 322 (Tex. Ct. App. 1993).

152. *Alicia v. Snyder*, 748 N.E.2d 285, 289 (Ill. App. Ct. 2001).

and set a strong precedent for Minnesota litigants to follow.

VII. CONCLUSION

In deciding *Joseph*, the Minnesota Supreme Court unfortunately continued the use of claim preclusion as the res judicata limit of declaratory actions in Minnesota and failed to give an analysis adequate to support its decision.¹⁵³ The decision will deter litigants from using declaratory actions to avoid damages,¹⁵⁴ increase attorneys' fees,¹⁵⁵ and crowd court dockets by encouraging litigants to bring full-fledged coercive suits.¹⁵⁶ Finally, the decision fails to clearly adopt a rule subjecting declaratory actions to statutes of limitation.

153. *Id.* at 327.

154. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 33 cmt. c (1982).

155. Hisserich, *supra* note 4, at 160 (“By focusing on a specific issue at contention between the parties, the court can resolve the problem relatively quickly, avoiding the expense and strain of full-scale litigation.”).

156. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 33 cmt. c (1982).