

New Jersey Supreme Court Issues Decision Clarifying Defendants' Claims Against Potentially Liable Third Parties

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In some construction defect cases, the condominium association or homeowner files claims against the developer only, and does not file claims against the potentially liable design professionals, general contractors or subcontractors. In other cases, the association or homeowner may initially file claims against these other potentially responsible parties along with the developer but, for any host of reasons, later choose to dismiss those direct claims either with or without prejudice. Under each of those circumstances, developers should typically have filed contingent claims for contribution either as a third-party claim or cross-claim. There is sometimes confusion as to whether that third-party defendant, or dismissed prior direct defendant, is required to participate in the trial or whether the plaintiff's recovery against the remaining parties is simply reduced by any allocation of liability to the absent party.

The New Jersey Supreme Court recently confirmed that, in cases where a defendant has asserted contingent claims against a third party that the plaintiff chose not to sue directly, the third-party contingent claims are actionable under long-standing allocation of fault principles, and the third parties must remain in the case to participate at trial. In [*Mejia v. Quest Diagnostics, Inc.*](#), the plaintiff filed a lawsuit against a clinical laboratory contending that it negligently failed to detect his late wife's cancer. The lab joined her family doctor and gynecologist to the action as third-party defendants. Thereafter, the plaintiff chose to assert direct claims against the family doctor, but not the gynecologist. Shortly before trial, the gynecologist filed a motion to be dismissed from the case because no direct claims of wrongdoing were asserted against him. He sought a ruling that he would not be required to participate at trial and that any liability apportioned to him at trial would be used solely to reduce the plaintiff's recovery against the lab and family doctor.

The Supreme Court affirmed the decision denying the gynecologist's motion. The Court held that the gynecologist was an active third-party defendant in the litigation as an alleged joint tortfeasor regardless of the plaintiff's decision not to file an affirmative claim against him. As a result, he was required to participate at trial so the jury could determine the allocation of percentage of negligence to each party. The Court outlined three possible scenarios regarding the plaintiff's recovery of damages. If the jury found that the lab or doctor was 60% or more at fault, the plaintiff could recover the full amount of damages from that party and then that party could recover any remaining percentage of fault allocated to the gynecologist from him on their contribution claim. If the jury found that the gynecologist was 60% or more at fault, the plaintiff's recovery would be limited to the percentage of fault allocated to the lab and doctor. Lastly, if the jury found that the gynecologist was 100% at fault, the plaintiff would recover nothing.

Under *Mejia*, design professionals and contractors cannot avoid potential liability to developers solely because the plaintiff has chosen not to pursue direct claims against them. This decision not only preserves developers' third-party claims under such circumstances, but should also enhance their position during settlement negotiations. Faced with the requirement that they participate at trial, the great expense to be incurred associated with the trial and the possibility that they may need to contribute to any damages award against the developer, the design professional and/or contractor (and their carriers) should be further incentivized to resolve the third-party claim prior to trial. Such a settlement can benefit the developer by potentially reducing the total amount of the plaintiff's damages claim and eliminating alleged defects and issues to be presented to the jury. Additionally, were a jury to find the developer 60% or more at fault at a trial, but find the settling contractor also partially at fault, the contractor's percentage of fault is automatically reduced from the

developer's percentage of fault; the developer is not required to satisfy 100% of the judgment and is not forced to seek contribution from the settling contractor that very well may have little to no funds to contribute.

If you have questions about this case or construction defects in New Jersey, contact [Don Taylor](#) at 732.855.6434 or [Dan Kluska](#) at 732.855.6033.

Attorneys

- Daniel J. Kluska
- Donald E. Taylor

Practice

- Construction Law