**Mejia v. Quest Diagnostics, Inc., Docket No. A-88-18 (082739), \_\_ N.J. \_\_ (2020)**

The New Jersey Supreme Court has held that third-party defendants are subject to the contribution claims filed against them by joint tortfeasors and must participate at trial regarding the underlying liability, unless a right to a dismissal of the third-party claims against them exists. Absent a meritorious basis for dismissal, the third-party defendant is an active party who must participate at trial.

Plaintiff filed a complaint against Quest Diagnostics, Inc., and two of its employees (the Quest defendants) based on an alleged failure to detect plaintiff’s decedent’s cancer. The Quest defendants/third-party plaintiffs then filed third-party claims for contribution and indemnification against plaintiff’s decedent’s gynecologist and plaintiff’s decedent’s family practitioner. Plaintiff then filed an affirmative claim against the family practitioner but never filed a claim against the third-party defendant gynecologist. The gynecologist demanded an Affidavit of Merit (AOM) in its Answer to the third-party complaint but never opposed a subsequent motion by the third-party plaintiff for an order finding that the third-party plaintiff was not required to serve an AOM against the third-party defendant.

Shortly before trial, the third-party defendant filed a motion effectively seeking dismissal and to not have to participate at trial consistent with defendants in Jones v. Morey’s Pier, Inc., 230 N.J. 142 (2017) and Burt v. West Jersey Health Systems, 339 N.J. Super. 296 (App. Div. 2001) arguing that as third-party defendant he did not need to be involved since plaintiff failed to bring a direct claim against him. The Supreme Court affirmed the Appellate Court’s judgment upholding the trial court’s denial of the third-party defendant’s motion. The Court held that the third-party defendant must participate in the trial to establish underlying liability under the circumstances presented based upon the potential for the third-party defendant to owe contribution.

The Court reasoned that while a plaintiff cannot recover directly from a third-party defendant, if the trier of fact determines that a direct defendant is 60% or more at fault, then a plaintiff can recover the full amount of damages from that defendant under the Comparative Negligence Act, N.J.S.A. 2A:15-5.3(a). In that case, if the trier of fact finds the third-party defendant to be between 1% and 40% at fault, then the third-party defendant is liable for its allocated percentage of fault in contribution to the defendant that paid plaintiff the full amount of damages under the Comparative Negligence Act, N.J.S.A. 2A:15-5.3(e). If the trier of fact finds the third-party defendant 60% or more at fault, then plaintiff’s recovery is limited to the remaining percentages of fault allocated to any direct defendants. If the third-party defendant is found to be 100% at fault, then the plaintiff recovers nothing.

The Court refrained from ruling on whether the third-party defendant was entitled to an AOM given that the third-party defendant never opposed the motion waving the requirement, never moved for reconsideration of that order, nor raised the issue on appeal