

Client Alert **Product Liability Law**

NJ Supreme Court Clarifies Jury Allocation Rules for Out-of-State Tortfeasors

In a significant decision clarifying the limits of comparative fault in New Jersey, the New Jersey Supreme Court held in *Estate of Crystal Walcott Spill v. Markovitz* (A-34-23) 2025 N.J. LEXIS 211 (March 11, 2025) that a jury may not allocate fault to an out-of-state tortfeasor not subject to personal jurisdiction in New Jersey under the Comparative Negligence Act (CNA), even if that individual's alleged negligence contributed to the plaintiff's harm. The Supreme Court simultaneously preserved the defendant's ability to seek contribution under the Joint Tortfeasors Contribution Law (JTCL).

Case Background

Crystal Walcott Spill died following a surgical procedure in New Jersey and her estate brought a wrongful death action against various healthcare providers involved in her care. The defendant providers sought to allocate fault to Dr. Jenny Diep, a New York-based rheumatologist who doubled Spill's blood pressure medication shortly before surgery. Although Dr. Diep was not a party to the case, the defendants filed a third-party complaint against her and her practice.

The New Jersey trial court granted Dr. Diep's motion to dismiss for lack of personal jurisdiction. The trial court also denied the defendants' motion to include Dr. Diep on the jury verdict sheet for allocation purposes. The Appellate Division affirmed, and the Supreme Court granted leave to appeal.

The New Jersey Supreme Court's Ruling

In a unanimous opinion authored by Justice Noriega, the Court made two key rulings:

No Jury Allocation Under the CNA: The CNA allows allocation of fault only among "parties" to the lawsuit. Dr. Diep was never subject to personal jurisdiction in New Jersey, and therefore did not qualify as a "party" for purposes of jury allocation. The Court distinguished this case from prior decisions in which juries were permitted to allocate

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fault to non-parties, such as settling defendants or parties dismissed on procedural grounds. In those earlier cases, plaintiffs' litigation choices—like settling or failing to preserve claims—effectively prevented defendants from seeking contribution, raising fairness concerns. Here, by contrast, there was no such strategic conduct by plaintiffs. Dr. Diep was simply outside New Jersey's jurisdiction from the outset, and defendants made no showing that plaintiffs acted to shield her from liability. As a result, allowing fault allocation under the CNA would exceed the statute's scope, which limits apportionment to parties properly before the court.

Preservation of Contribution Rights Under the JTCL: While the CNA precludes jury allocation to parties within jurisdiction, the JTCL's reach is more expansive. The language of the statute allows a judgment-paying defendant to seek contribution from "persons" who are jointly liable in tort—even if they were not part of the trial or subject to personal jurisdiction. Accordingly, the defendants retain the right to bring a contribution action against Dr. Diep in New York if a judgment is entered against them in New Jersey.

Practical Implications

Trial Strategy: Defendants in multi-state tort cases cannot rely on New Jersey juries to allocate fault to out-of-state actors unless those actors are parties to the cases and subject to jurisdiction in New Jersey.

Post-Judgment Remedies: The decision underscores the importance of preserving and pursuing contribution claims under the JTCL in appropriate forums, especially when jurisdictional limits prevent joining other tortfeasor parties at trial.

Looking Ahead

The decision reinforces a clear statutory divide: under the CNA, allocation of fault at trial can only be assigned to parties of a suit, while the JTCL permits more broad equitable sharing of liability post judgment. Litigators handling complex medical malpractice or multi-jurisdictional tort claims should carefully consider the practical limits of both statutes when developing strategy.

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