

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Estate of Gaza v. Popovich No. A-2310-22

Every now and then, you need to do some math. This is true for lawyers, too. “You want the math? You can’t handle the math!” While us lawyers might hope our profession keeps us far away from numbers and Excel, all too often litigators need to crunch some damages dollars—or at minimum, account for percentages of fault. Which is what this case is all about.

In *Estate of Gaza v. Popovich*, the Appellate Division upheld a trial court’s decision holding a surgeon liable for all damages arising from the death of a patient who had developed sepsis following gallbladder surgery. More specifically, the trial court rejected—and the Appellate Division affirmed—the doctor’s bid to reduce his responsibility by attributing part of the fault to a radiologist who had been dismissed from the case. As a result, Dr. Joseph Popovich must pay the full \$1.57 million judgment awarded to the Estate of Victor Gaza Jr.

At the trial phase, a jury found Popovich 60 percent at fault and radiologist Dr. Peter Goldsmith 40 percent at fault for Gaza’s death. Popovich argued that under prior case law, including *Burt v. West Jersey Health System*, he should pay only his share of the damages. The trial court disagreed, citing the Comparative Negligence Act and the Joint Tortfeasors Contribution Law, which make a defendant who is at least 60 percent at fault liable for the full amount of damages.

The appellate panel said the ruling was consistent with the state Supreme Court’s guidance in *Mejia v. Quest Diagnostics*. That decision clarified that a defendant’s right to seek contribution from other negligent parties exists independently of a plaintiff’s direct claims. “The direct defendants’ dismissals based on the statute of limitations do not adversely affect Popovich’s right to contribution,” the court wrote, affirming that Popovich could still pursue such claims separately — but not reduce his own liability to the Gazas.

Popovich had also challenged the trial court's decision to bar him from using the plaintiffs' amended complaint to impeach witnesses. The appellate court dismissed that argument, saying whether the plaintiffs had alleged negligence against other doctors was "irrelevant" to determining whether Popovich or others were negligent in Gaza's care.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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About Schenck Price

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