

Blog Entry: New Jersey Appeals Court Holds That Pre-Suit Notice of Tort Claim Need Not Be Served on a Government Contractor.

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On April 14, 2016, a New Jersey appellate court reversed the trial court's dismissal of Plaintiff Gina Marie Gomes's six-count tort complaint against the County of Monmouth and Correct Care Solutions, Inc. ("CCS"). *Gomes v. Cty. of Monmouth*, No. A-1679-14T4, 2016 N.J. Super. LEXIS 52 (Super. Ct. App. Div. Apr. 14, 2016). The New Jersey appeals court's decision has widespread importance for New Jersey private government contractors. Government contractors must now recognize that they are not required to receive pre-suit notice of tort claims, nor are subcontractors required to serve such a notice of tort claim on contractors on New Jersey public construction projects. However, the court was clear that its holding was limited to the pre-suit notice provisions of the Tort Claims Act ("TCA"), and that "derivative immunity" for government contractors is still possible.

Co-defendant CCS is a private company that provided medical services to inmates at the Monmouth County Medical Institution. In a case of first impression, the appeals court held that the TCA does not require service of a notice of a tort claim upon a private government contractor under N.J.S.A. 59:8-8.

Plaintiff Gomes served her notice of tort claim upon defendants County of Monmouth, the Monmouth County Correctional Institution ("MCCI"), and the State Attorney General's Office following her alleged unlawful medical treatment while incarcerated at MCCI. She did not serve her notice on the government's private contractor, CCS. Shortly thereafter, Gomes filed suit against the County and CCS. Both the County and CCS moved to dismiss Gomes's complaint, in part because Gomes failed to serve a notice of tort claim upon CCS.

The trial court granted the County's and CCS's motion to dismiss and dismissed Gomes's complaint with prejudice. The trial court held that Gomes's lawsuit was barred under the TCA, as she failed to serve her notice of tort claim upon CCS within the ninety-day period set forth in N.J.S.A. 59:8-8. Because the trial court considered CCS to be a "public entity" under the TCA, Gomes was required to serve both the County and CCS-and not just the County-with her notice of tort claim.

The appeals court reversed. In facing what the court determined to be a "novel and important issue that most warrants attention," the appeals court held that the TCA does not require service of a tort claims notice upon a private government contractor. CCS, the appeals court held, is a private enterprise and is not a "county, municipality, district, public authority, public agency, [or] any other political subdivision or public body in the State." Thus, requiring a plaintiff such as Gomes to serve a

pre-suit tort claims notice upon a private government contractor “would clash with both the text of the TCA and the objectives of the statute’s notice provision.”

The appeals court acknowledged that certain private entities may be entitled to derivative immunity under the TCA. Under the agreement between the County and CCS, the County delegated some of its functions to CCS. However, the County’s delegation did not automatically convert CCS into a public entity for purposes of the TCA.