

# Assets "Earned" During A Pre-Marriage Cohabitation Are NOT Subject To Equitable Distribution — But They May Be Distributed Anyway.

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December 28, 2016 | by Matheu Nunn

On December 12, 2016, the Supreme Court of New Jersey (opinion by Justice Patterson) decided Thieme v. Aucoin-Thieme, a case involving a \$2,250,000 bonus received by a former husband three months after the parties' divorce. The Court held that the bonus, which the husband had not disclosed during settlement negotiations notwithstanding his knowledge of same, is subject to equitable distribution. In that regard, this decision is not terribly noteworthy; indeed, there is a large body of case law regarding the equitable distribution of assets received post-Complaint and even post-Divorce (e.g., stock options). This case is unique because of the length of the marriage (14 months) versus the "courtship" (8 years).

Here, Ms. Aucoin-Thieme and Mr. Thieme met in 2000/2001 and began to cohabit in 2002 due to Ms. Aucoin-Thieme's pregnancy. The parties resided together through and including their 2010 marriage — a marriage that ended a mere 14-months later. In April 2012, Mr. Thieme received a \$2,250,000 bonus and deposited a portion of it into a bank account — an account that was still titled in joint name with Ms. Aucoin-Thieme. Not one to miss an opportunity at \$200,000, Ms. Aucoin-Thieme withdrew the money. Unsurprisingly, litigation ensued between the parties.

The Supreme Court of New Jersey relied upon Legislative intent of the equitable distribution statute and held that, "it is evident that the Legislature did not intend to treat property acquired during a period of cohabitation prior to a marriage or civil union as the equivalent of property acquired during that marriage or civil union, for purposes of equitable distribution." Accordingly, it concluded that any bonus *earned prior to the marriage* could not be subject to equitable distribution. In that regard, this case is not too dissimilar from some existing case law.

Justice Patterson, however, approached the post-divorce bonus from a different angle. In that regard, the Court determined that Ms. Aucoin-Thieme's unjust enrichment had merit based on the specific facts of the case and due to the Family Part's role as a "court of equity." Some of those facts included the length of pre-marriage cohabitation versus the length of the marriage; admissions by Mr. Thieme that his ex-wife made "great sacrifices" in furtherance of his career; and, that both parties made decisions about their family based on the expectation of deferred compensation.

Let this case serve as a reminder that both the law and the facts matter — and so does retaining an attorney who can make credible arguments for an extension of the law based on the facts of your case.