

**To: New Jersey Law Revision Commission**  
**From: Shelby E. Ward, Esq.<sup>1</sup> and Carol Disla-Roa, Legislative Fellow**  
**Re: Operating Uninsured Automobiles – N.J. Stat. Ann. § 39:6A-4.5(a)**  
**Date: January 16, 2024**

## MEMORANDUM

### Project Summary

N.J.S. 39:6A-4.5(a) provides that if a person is operating an uninsured automobile and an accident occurs, an action for recovery of economic or noneconomic loss will be barred.<sup>2</sup> The term “operating” is not defined in Title 39.

N.J.S. 39:1-1 does, however, define “operator” as “a person who is in actual physical control of a vehicle ...”<sup>3</sup> Additionally, New Jersey courts have broadly construed the phrase “operates a motor vehicle” in New Jersey’s driving while intoxicated law (N.J.S. 39:4-50(a)), finding it applicable to an individual who is asleep with the engine running in a parked car, and in a variety of other circumstances.<sup>4</sup>

In *Memudu v. Gonzalez*, the Superior Court, Appellate Division, considered the novel issue of whether N.J.S. 39:6A-4.5(a) would bar the plaintiff’s Wrongful Death and Survivor Act claims because the decedent did not have automobile insurance at the time of the accident.<sup>5</sup> The Court examined prior case law and the sequence of events leading up to the decedent’s death and held as a matter of first impression that the Plaintiff’s claims were not barred because, at the time of the accident, the decedent was not “operating” the automobile.<sup>6</sup>

### Statutes Considered

**N.J.S. 39:6A-4.5(a)** provides, in relevant part:

Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by section 4 of P.L.1972, c. 70 (C.39:6A-4), section 4 of P.L.1998, c. 21 (C.39:6A-3.1) or section 45 of P.L.2003, c.89 (C.39:6A-3.3) shall have no cause of

---

<sup>1</sup> Preliminary research and drafting for this memorandum was conducted by Shelby E. Ward, Esq., as a pro bono volunteer with the N.J. Law Revision Comm’n during the Summer and Fall of 2023. Ms. Ward’s work was updated and supplemented by Carol Disla-Roa.

<sup>2</sup> N.J. STAT. ANN. § 39:6A-4.5(a) (West 2024).

<sup>3</sup> N.J. STAT. ANN. § 39:1-1 (West 2024).

<sup>4</sup> N.J. STAT. ANN. § 39:4-50 (West 2024). See generally *State v. Thompson*, 462 N.J. Super. 370, 374 (App. Div. 2020) (Holding that a defendant who was found asleep in a parked car with the engine running violated N.J.S. 39:4-50).

<sup>5</sup> *Memudu v. Gonzalez*, 475 N.J. Super. 15 (App. Div.), *leave to appeal denied*, 253 N.J. 549 (2023).

<sup>6</sup> *Id.* at 25 (emphasis added).

action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.<sup>7</sup>

\* \* \*

**N.J.S. 39:1-1** provides, in relevant part:

“Operator” means a person who is in actual physical control of a vehicle or street car.<sup>8</sup>

\* \* \*

**N.J.S. 39:4-50(a)** provides, in relevant part:

(a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle the person owns or which is in the person's custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood shall be subject ....<sup>9</sup>

\* \* \*

## **Background**

On October 26, 2019, defendant Khawaja Hameed was driving a vehicle owned by Hameed and A-1 Limousine (“A-1 Defendants”) when he rear-ended the vehicle of Najim Memudu on the New Jersey Turnpike in Edison.<sup>10</sup> The Memudu vehicle was disabled following the impact.<sup>11</sup>

Shortly after the accident, tow truck driver Brendan McMahon, who happened to be travelling past the accident scene, pulled over to assist Hameed and Memudu.<sup>12</sup> The front portion of Mr. Memudu’s vehicle was partially in the left travel lane, while the rear of his vehicle was on the shoulder.<sup>13</sup> Minutes later, Mr. Memudu borrowed McMahon’s cell phone so that he could use its light to look for his own phone, which was located within his disabled car.<sup>14</sup> As Mr. Memudu was looking for his phone, McMahon observed another car, driven by defendant Gonzalez (Defendant), crash into the front passenger side of Mr. Memudu’s car.<sup>15</sup> McMahon then saw Mr.

---

<sup>7</sup> N.J. STAT. ANN. § 39:6A-4.5(a) (West 2024) (emphasis added).

<sup>8</sup> N.J. STAT. ANN. § 39:1-1 (West 2024).

<sup>9</sup> N.J. STAT. ANN. § 39:4-50 (West 2024) (emphasis added).

<sup>10</sup> *Memudu*, 475 N.J. Super. at 17.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 18.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Memudu lying face down on the road outside of his vehicle.<sup>16</sup> Mr. Memudu was pronounced dead at the scene.<sup>17</sup> About thirty minutes elapsed between the first and second accidents.<sup>18</sup>

A complaint was filed on behalf of Mr. Memudu's estate under the Wrongful Death Act and the Survivor Act.<sup>19</sup> The A-1 Defendants and the Defendant both filed motions for summary judgment, arguing that the plaintiff's claim was barred by N.J.S. 39:6A-4.5(a) because Mr. Memudu (the decedent) was operating his vehicle at the time of both accidents.<sup>20</sup> The motion judge granted the summary judgment to the A-1 Defendants but denied summary judgment to the Defendant.<sup>21</sup> The Appellate Division affirmed.<sup>22</sup>

### Analysis

The Appellate Division considered whether the decedent was operating his vehicle at the time of the second accident when the Defendant hit the decedent's car.<sup>23</sup> If the decedent was operating his uninsured vehicle at the time of the second accident, for purposes of N.J.S. 39:6A-4.5(a) the plaintiff would be barred from recovering for any economic and non-economic loss resulting from the accident.<sup>24</sup>

#### N.J.S. 39:6A-4.5(a)

N.J.S. 39:6A-4.5(a) falls within the "Compulsory Motor Vehicle Insurance" provisions of Title 39. The purpose of this section is "[t]o reduce the cost of automobile insurance, protect victims of automobile accidents and reduce public expenditures when accidents are caused by judgment-proof tortfeasors."<sup>25</sup> The legislature enacted N.J.S. 39:6A-4.5(a) reasoning it would promote better compliance with compulsory insurance law.<sup>26</sup>

#### *Perrelli v. Pastorelle*

In *Perrelli v. Pastorelle*, the Supreme Court of New Jersey expanded the literal meaning of "operating" under N.J.S. 39:6A-4.5(a).<sup>27</sup> The plaintiff in *Perrelli* was driving her uninsured vehicle, accompanied by a friend who was sitting in the passenger seat.<sup>28</sup> The pair stopped at a rest

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 20.

<sup>24</sup> *Id.* at 21.

<sup>25</sup> *Perrelli v. Pastorelle*, 206 N.J. 193, 201 (N.J. 2011) citing *Caviglia v. Royal Tours of America*, 178 N.J. 460, 466 (2004); N.J. STAT. ANN. § 39:6B-1 (West 2024).

<sup>26</sup> *Id.* at 203 citing *Caviglia*, 178 N.J. at 477.

<sup>27</sup> *Id.* at 195.

<sup>28</sup> *Id.*

area and the friend took over driving.<sup>29</sup> The plaintiff's vehicle was later involved in an accident while the friend was driving, and the plaintiff was injured.<sup>30</sup>

The *Perrelli* Court held that even though the plaintiff was not driving her car at the time of the accident, she was operating her vehicle under N.J.S. 39:6A-4.5(a) and was barred from recovering for economic and non-economic loss.<sup>31</sup> The Court explained that “[a] literal interpretation would construe the provision as applying only to a driver of the automobile, and would allow the culpably uninsured person to violate the law and not suffer its consequences.”<sup>32</sup> Thus, the bar to recovery for uninsured operators applies to the owner “whether injured as a driver or passenger.”<sup>33</sup> The *Perrelli* Court reasoned that “there can be no doubt [] the Legislature wanted to assure that all automobiles were covered by compulsory insurance by precluding those who do not have the required coverage from recovering from others merely by having someone else drive their car.”<sup>34</sup>

### *Memudu v. Gonzalez*

Distinguishing *Perrelli*, the *Memudu* Court held that the N.J.S. 39:6A-4.5(a) bar to recovery did not preclude Plaintiff's “wrongful death and survivor claims.”<sup>35</sup> In *Memudu*, the Defendant argued that *Perrelli* extends to their unique circumstances stating there was “a substantial nexus between the first and second impacts” and therefore, even though the decedent was not driving his vehicle at the time of the second accident, it was a direct result of his uninsured operation of the vehicle.<sup>36</sup>

The Court disagreed and instead held that the unique facts of *Perrelli* did not extend to *Memudu*.<sup>37</sup> The Court explained that although the decedent was operating the vehicle at the time of the first accident, neither he nor anyone else was operating the disabled vehicle at the time of the second accident which led to the decedent's death.<sup>38</sup> At the time of the second accident, the decedent was only in the car because he was looking for his phone.<sup>39</sup>

The Court cited *Aronberg v. Tolbert*, stating “[t]he statute's self-evident purpose is not to immunize a negligent driver from a civil action, but to give the maximum incentive to all motorists to comply with this State's compulsory no-fault insurance laws.”<sup>40</sup> The Court emphasized that the

---

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 198.

<sup>32</sup> *Id.* 208.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 203.

<sup>35</sup> *Memudu*, 475 N.J. Super. at 22.

<sup>36</sup> *Id.* at 20.

<sup>37</sup> *Id.* at 24.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 21 citing *Aronberg v. Tolbert*, 207 N.J. 587, 599 (2011).

plain language of the statute refers to injuries that occur “while operating an uninsured automobile.”<sup>41</sup>

### **N.J.S. 39:4-50(a) – Driving While Intoxicated**

Variations of the term “operate” have been discussed in cases decided under Title 39 in the DWI context, addressing whether an individual was operating a vehicle while under the influence of substances as prohibited by the statute.<sup>42</sup>

#### *State v. Thompson*

In the recently-decided case of *State v. Thompson*,<sup>43</sup> police officers found the defendant sleeping behind the wheel of his motor vehicle with the engine running, an odor of alcohol present, and prescription drugs on the passenger side of the vehicle.<sup>44</sup> The record also contained responses from the defendant in which he stated that he had consumed a few alcoholic drinks.<sup>45</sup>

In *Thompson*, the Court held that “an intoxicated and sleeping defendant behind the wheel of a motor vehicle with the engine running is operating the vehicle within the meaning of N.J.S. 39:4-50(a), [and] even if the vehicle was not observed in motion [][,] it is the possibility of motion that is relevant.”<sup>46</sup>

The *Thompson* Court explained that New Jersey’s “Supreme Court has recognized that ‘operation’ may be found from evidence that would reveal ‘a defendant’s intent to operate a motor vehicle.’”<sup>47</sup> The Court emphasized that “operation” “may also be established ‘by observation of the defendant in or out of the vehicle under circumstances indicating that the defendant had been driving while intoxicated.’”<sup>48</sup> Both the intent to operate and evidence of recent operation in an intoxicated state fall under the definition of “operating” for purposes of N.J.S. 39:4-50(a).

The *Thompson* Court explained that the statute must be construed flexibly to deter drunk driving for the benefit of the public.<sup>49</sup> It indicated that the issue of “operation” had been discussed seven times in the twelve months preceding its decision,<sup>50</sup> stressing that the issue of operation is discussed an “extraordinary number of times” in the DWI context.<sup>51</sup>

N.J.S. 39:4-50(a) and N.J.S. 39:6A-4.5(a) differ in that the latter’s plain language

---

<sup>41</sup> *Id.* at 25.

<sup>42</sup> N.J. STAT. ANN. § 39:4-50 (West 2024); *State v. Thompson*, 462 N.J. Super. 370 (App. Div. 2020).

<sup>43</sup> *Id.* at 372.

<sup>44</sup> *Id.* at 373.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 375 (citing *State v. Stiene*, 203 N.J. Super. 275, 279 (App. Div. 1985)) (internal quotations omitted).

<sup>47</sup> *Id.* citing *State v. Tischio*, 107 N.J. 504, 513 (1987). *See also*, *State v. Speranza*, 2021 WL 4305020 (App. Div. 2021) (defendant found behind the wheel of a running vehicle in the street near an intersection), *State v. Bianco*, 2022 WL 386108 (App. Div. 2022) (underlying facts similar to those found in *Thompson*), *State v. Damico*, 2022 WL 17332131 (App. Div. 2022) (defendant was in his vehicle late at night with the engine running, the turn signal on, and the brake lights activated).

<sup>48</sup> *Id.* citing *State v. Ebert*, 377 N.J. Super. 1, 11 (App. Div. 2005).

<sup>49</sup> *Id.* citing *Tischio*, 107 N.J. at 512.

<sup>50</sup> *Id.* at 376.

<sup>51</sup> *Id.*

contemplates “while operating” rather than “operates.”<sup>52</sup> Cases in the DWI context often use “operates,” “operation,” and “operating” when discussing these matters.<sup>53</sup>

### Pending Bills

There is one bill pending seeking to repeal N.J.S. 39:6A-4.5(a).<sup>54</sup> This bill seeks to repeal N.J.S. 39:6A-4.5 as a part of the bill’s overall goal of repealing no-fault automobile insurance law and requiring mandatory liability for motor vehicles.<sup>55</sup> The bill was introduced in this session as well as the 2022-2023, 2020-2021, and 2018-2019 sessions.<sup>56</sup> In each of those sessions, the bill was introduced in the Senate and referred to the Senate Commerce Committee with no further progress.<sup>57</sup> There are no bills pending to specifically amend the language of N.J.S. 39:6A-4.5(a). There are bills pending to amend N.J.S. 39:1-1, but none seek to amend the definition of “operator.”<sup>58</sup> Lastly, there are bills pending to amend N.J.S. 39:4-50 but none seek to modify the language of subsection (a).<sup>59</sup>

### Conclusion

Staff seeks authorization to conduct additional research and outreach regarding N.J.S. 39:6A-4.5(a) to determine whether the statute would benefit from clarification of the term “operating.”

---

<sup>52</sup> N.J. STAT. ANN. § 39:4-50 (West 2024); N.J. STAT. ANN. § 39:6A-4.5(a).

<sup>53</sup> See *Thompson*, 462 N.J. Super. at 374 (“There is no doubt that an intoxicated and sleeping defendant behind the wheel of a motor vehicle with the engine running is operating the vehicle.”) (emphasis added).

<sup>54</sup> Statement to S.B. 2254, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 09, 2024).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*; see generally Statement to S.B. 466, 2022 Leg., 220<sup>th</sup> Sess. (Jan. 11, 2022) Statement to S.B. 782, 2020 Leg., 219<sup>th</sup> Sess. (Jan. 14, 2020); see also Statement to S.B. 2431, 2018 Leg., 218<sup>th</sup> Sess. (April 4, 2018).

<sup>57</sup> *Id.*

<sup>58</sup> See generally Statement to A.B. 1250, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 2024); Statement to A.B. 1976, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 2024); Statement to A.B. 207, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 2024).

<sup>59</sup> See generally Statement to S.B. 515, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 09, 2024); Statement to A.B. 1726, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 2024); Statement to A.B. 1023, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 2024); Statement to A.B. 810, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 2024); Statement to A.B. 3298, 2024 Leg., 221<sup>st</sup> Sess. (Jan. 2024).