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## Automobiles - Unsatisfied Judgment Fund - Amount Received under Uninsured Motorist Clause of Insurance Contract Not Deductable from Amount Owed under Unsatisfied Judgment Fund

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**AUTOMOBILES — UNSATISFIED JUDGMENT FUND — AMOUNT RECEIVED UNDER UNINSURED MOTORIST CLAUSE OF INSURANCE CONTRACT NOT DEDUCTIBLE FROM AMOUNT OWED UNDER UNSATISFIED JUDGMENT FUND**—Appellant obtained a judgment for bodily injury resulting from an automobile accident while riding as a guest in her brother's automobile. She received compensation in the amount of her judgment under an uninsured motorist clause in her brother's automobile insurance policy. She released the insurer and the insurer in turn waived its right of subrogation.<sup>1</sup> Upon making application for compensation from the unsatisfied judgment fund, the District Court deducted the amount received under the insurance contract from the amount payable from the fund. On appeal, the North Dakota Supreme Court *held* that the payment made to the appellant as an insured under the insurance policy was not a "collection of a part of her judgment," as contemplated by statute and hence could not be deducted from the amount payable on the judgment. *Pearson v. State Unsatisfied Judgment Fund*, 114 N.W.2d 257 (N.D. 1962).

In North Dakota the only limitation on persons qualified to recover from the fund is that they be "residents" of North Dakota.<sup>2</sup> There are no express provisions for amounts deductible from any judgment recoverable from the fund except for the clause allowing for a deduction where the judgment creditor has collected "a part of his judgment from any source."<sup>3</sup> In the instant case, the Supreme Court construed the insurance payment as arising from a private contractual relationship which in no way resulted in the discharge of the rights and obligations of the judgment. The insurer had no obligation to either the judgment debtor or to the unsatisfied judgment fund. Thus, the amount paid to the appellant was compensation for her loss but technically not payment of her judgment from any source contemplated by statute.

Unsatisfied judgment funds originated by statutes to protect people injured by financially irresponsible or unknown owners and operators of motor vehicles.<sup>4</sup> Their purpose is to

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1. It should be noted that if the insurer hadn't waived subrogation the appellant could not have collected from the fund. This is because she would have had no judgment to assign to the fund which is required by statute. N.D. Cent. Code § 39-17-08.

2. N.D. Cent. Code § 39-17-03.

3. N.D. Cent. Code § 39-17-07.

4. See, e.g., *Allied American Mut. F. Ins. Co. v. Commissioner of Motor Vehicles*, 219 Md. 607, 150 A.2d 421 (1959).

compensate losses suffered from the negligent operation of motor vehicles by uninsured motorists.<sup>5</sup> The persons entitled to recover from the fund and the amount recoverable from the fund are subject to limitations and deductions which vary by statute in each of the four jurisdictions which have adopted some form of this plan.<sup>6</sup>

New Jersey statutes are more restrictive than North Dakota's and provide limitations on the persons qualified to collect from the fund.<sup>7</sup> Up until 1958, the New Jersey Statute provided deductions for "indemnities or other benefits received from any other person other than the judgment debtor."<sup>8</sup> This provision was construed by the courts to include: compensation received from various types of insurance policies;<sup>9</sup> wages paid gratuitously to an employee while he was laid up unable to work because of injuries sustained in an automobile accident;<sup>10</sup> sums recovered in settlement from a co-defendant.<sup>11</sup> After 1958 this provision for deductions was amended by substituting the words "payments upon the judgment, or by way of settlement" for the words "indemnities or other benefits," which makes their statute similar to North Dakota's.<sup>12</sup>

New York established a unique plan combining compulsory uninsured motorist insurance and a fund for unsatisfied claims and judgments.<sup>13</sup> Persons classified as an "insured" under the

5. See, e.g., *Robson v. Rodriguez*, 26 N.J. 517, 141 A.2d 1 (1958).

6. Maryland, Md. Ann. Code Art. 66½ §§ 150-179 (1957) (Maryland Statute similar to New Jersey but no cases in point reported); New Jersey, N.J. Stat. Ann. §§ 39:6-61 to -91 (1961); New York (combined plan), N.Y. Insurance Law §§ 167 (2-a), 183 (1) (f), 600-626, N.Y. Vehicle and Traffic Law § 318 (11); North Dakota, Chapter 39-17, N.D. Cent. Code. See Ward, *The Uninsured Motorist*, 9 Buffalo L. Rev. 283 at 285 (1960) for a detailed comparison of the four jurisdictions having adopted some form of unsatisfied judgment fund.

7. N.J. Stat. Ann. 39:6-70 (1961). The fund does not extend to a person entitled to workmen's compensation; or to a spouse, parent or child, of the judgment debtor; or a guest occupant in the automobile; or to a person who was operating or riding in an uninsured automobile owned by him, spouse, parent or child; or was operating a motor vehicle in violation of suspension or revocation.

8. N.J. Stat. Ann. 39:6-70 (m) (1952).

9. *Dixon v. Gassert*, 29 N.J. 1, 138 A.2d 14 (1958) (accident and health policy, medical policy, and "blue cross" policy furnished and paid for by employer); *Holmberg v. Aten*, 66 N.J. 73, 171 A.2d 667 (1960) (medical clause of automobile liability policy and hospitalization policy furnished and paid for by husband); *Minardi v. Dupant*, 49 N.J. Super. 139, 139 A.2d 452 (1958) and *Fesano v. Gassert*, 49 N.J. Super. 52, 138 A.2d 752 (1958) (temporary disability, hospitalization, and medical and surgical payments).

10. *Unger v. Kemmerer*, 59 N.J. Super. 262, 156 A.2d 52 (1959).

11. *Gray v. Tice*, 52 N.J. Super. 309, 145 A.2d 353 (1958).

12. N.J. Stat. Ann. 39:6-70 (m) (1961). As of the present time there have been no cases under this new provision.

13. Statutes cited *supra*, note 6. See generally 79 A.L.R.2d 1255, and Ward, *The Uninsured Motorist*, 9 Buffalo L. Rev. 283 at 290 (1960).

statute<sup>14</sup> are denied relief from the unsatisfied claim and judgment fund and only those who can be classified as "qualified" persons are allowed relief under the fund.<sup>15</sup> The deduction provisions of the statute are similar to North Dakota in that they allow deductions for the amounts paid in the satisfaction of the judgment, but they go further in that they allow deductions specifically for any amount of liability insurance afforded to the claimant.<sup>16</sup>

An unsatisfied judgment fund should be used only for the benefit of those who have no other means of being compensated for their personal injuries. Uninsured motorist insurance was created by insurance companies just for this purpose. The logical question that follows is whether an unsatisfied judgment fund should pay a judgment creditor after he has already been compensated by an insurance company? It is submitted that North Dakota's deduction provision is good, but the limitations determining those persons qualified to recover under the fund should be extended to overcome this problem of double compensation. The other three jurisdictions have done this successfully and without apparent difficulty.

PHILIP J. TEIGEN

CRIMINAL LAW—CORAM NOBIS—AVAILABILITY FOR REVIEW OF ERROR APPEARING ON RECORD—In 1943 the defendant was indicted and placed on trial for the crime of murder in the first degree. The original plea of not guilty was changed to guilty of murder in the second degree after a conference attended by the court in which the defendant was examined by four psychiatrists. One of these physicians expressed the opinion that the boy was not sane at the time of the alleged killing but was suffering a "psycho motor epileptic attack." The other three disputed the existence of epilepsy and agreed that the defendant was legally sane. Prison records showed a history of epileptic seizures. The asserted basis for relief was an allegation

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14. N.Y. Insurance Law § 601 (i) (1961). "The 'insured,' a person defined as an insured under any policy of insurance issued by any member in connection with motor vehicles containing the provision required by (§ 167)." (§ 167 provides for liability insurance conditions).

15. N.Y. Insurance Law § 601 (b) (1961). "A 'qualified person,' means (1) a resident of this state, other than the insured or the owner of an insured motor vehicle and his spouse when a passenger in such a vehicle . . . or (2) a resident of another state . . . in which recourse is afforded to the residents of this state . . ."

16. N.Y. Insurance Law § 610 (1961).