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LAKITA D. MURRAY,

PETITIONER,

V.

CHRISTOPHER B. PUNINA,
CHRISTOPH PUNINA,
NEW JERSEY PROPERTY
LIABILITY GUARANTY
ASSOCIATION, A/K/A/ NJPLIGA,

DEFENDANTS-RESPONDENTS,

AND

ANTHONY MARRONE, II,

DEFENDANT-RESPONDENT.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 090246

Sat Below: Vernoia, Gummer, and Walcott-Henderson, J.A.D.

Honorable Justices:

Petitioner respectfully submits this Petition for Certification to review the attached decision of the Superior Court of New Jersey, Appellate Division, Docket No. A-0559-22 (December 31, 2024). PA1.

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Question Presented

Does the amended N.J.S.A. 39:6A-12 of the No-Fault Act prohibit an injured plaintiff from presenting evidence of her future medical expenses at a civil trial and recovering damages for those expenses from the tortfeasor defendant?

Matter Presented

The Court granted Certification and heard arguments on a similar issue in Brehme v. Irwin, No. 089025, 2025 WL 97218, at *5 (N.J. Jan. 15, 2025), noting that Certification was granted on the following: "Under the circumstances presented, did the filing of a warrant to satisfy judgment under Rule 4:48-1 bar plaintiff from filing an appeal, and if not, could plaintiff seek future medical expenses that would exceed her personal injury protection (PIP) coverage under N.J.S.A. 39:6A-12?"

However, on January 15, 2025, the Court ruled that plaintiff Brehme was indeed barred from pursuing her appeal. The Court, therefore, did not address the second question identified for Certification.

Petitioner Murray now requests that the Court grant Certification in her case here and address a similar issue to the one raised but unresolved in Brehme: Does N.J.S.A. 39:6A-12 prevent an injured plaintiff from presenting evidence of her future medical expenses at a civil trial and recovering damages for those expenses from the tortfeasor defendant when PIP benefits have not been exhausted?

This is a significant issue for Ms. Murray and countless injured plaintiffs seeking damages from tortfeasors in our courts. Ms. Murray suffered severe facial injuries when the car she was riding in, driven by Defendant Punina, collided with the vehicle operated by Defendant Marrone. PA2.

Because Punina's vehicle was uninsured and the plaintiff did not live in a household where he or a family member insured a car, the plaintiff filed a claim for personal injury protection (PIP) benefits with the New Jersey Property and Liability Guaranty Association (NJPLIGA), which administers the Unsatisfied Claims and Judgment Fund ("UCJF"), N.J.S.A 39:6-86.1.

The plaintiff also filed this lawsuit seeking damages against the uninsured Punina and the other driver, Marrone, who was insured. Punina defaulted, and the trial proceeded against the insured defendant, Marrone. During the trial, Ms. Murray presented her doctor's testimony about the scarring and disfigurement caused by the accident, as well as the future procedures she would need to undergo to mitigate the harm (2T41-47). Her doctor, Dr. Perry, estimated the cost of the first option to be between $20,000 and $30,000, and up to $160,000 for the second, more extensive option. Id. at 45:1-46:25.

The jury returned a verdict in Ms. Murray's favor, attributing eighty percent of liability to Defendant Punina and twenty percent to Marrone. The jury awarded $250,000 in non-economic damages and $100,000 for future medical expenses.

Consequently, based on the liability percentages assigned to each defendant, the jury awarded $50,000 in non-economic damages and $20,000 in future medical expenses against Defendant Marrone for the plaintiff. The trial court entered judgment against Punina for $306,944.86 and against Marrone for $76,736.21.

Marrone moved under Rule 4:40-2 for judgment notwithstanding the verdict, arguing that the plaintiff was not entitled to recover damages against him for future medical expenses. Citing N.J.S.A. 39:6A-12 of the No-Fault Act, Marrone contended that the statute barred evidence of future medical expenses from being presented to the jury, as such expenses are "payable" and "collectible" under the statute. Marrone maintained that Ms. Murray had no legal right to claim damages for those future medical expenses against him. Her only means to recover for future medical expenses was to file a claim under the UCJF, administered by the NJPLIGA. She must sue NJPLIGA separately in a coverage action if that claim is denied, Marrone argued.

The trial court denied Marrone's motion, stating "the No-Fault Act does not preclude [p]laintiff from seeking such an award of future medical expenses" against the insured Marrone. The court noted that the No-Fault Act had been recently amended and broadened an injured plaintiff's right to recovery against a tortfeasor in a lawsuit. The court stated that because the jury concluded that Ms. Murray's injury will result in future medical expenses and established a causal link

between the injury and Marrone's tortious conduct, "[p]laintiff is clearly entitled to recovery for that injury now" (PA1-9).

Marrone appealed, however, and the appeals panel ruled that the trial court "erred in permitting the jury to hear evidence of those possible future costs and in issuing orders awarding damages for those costs." The panel acknowledged that the Legislature had recently amended the No-Fault Act to clarify an injured plaintiff's broad right to recover damages from a tortfeasor at trial, but ruled that the Act limited a plaintiff to recovering future medical expenses only through PIP or in this case NJPLIGA, not from a tortfeasor in a personal injury case trial. PA11-23. Though the amended N.J.S.A. 39:6A-12 provides that "[n]othing in this section shall be construed to limit the right of recovery, against the tortfeasor, of uncompensated economic loss as defined by subsection k. of section 2 of L. 1972, c. 70 (C. 39:6A-2), including all uncompensated medical expenses not covered by the personal injury protection limits applicable to the injured party and sustained by the injured party," the panel said that the statute precluded an injured plaintiff from introducing at a personal injury trial evidence of losses "collectible" under PIP coverage, which included the future medical expenses testified about in Ms. Murray's case; this precluded Ms. Murray from recovering the $20,000 in damages for future medical expenses the jury had awarded against defendant Marrone. PA10-23.

ARGUMENT

THE COURT SHOULD GRANT CERTIFICATION AND DIRECTLY ADDRESS THE ISSUE THAT WAS NOT RESOLVED IN BREHME V. IRWIN:

DOES N.J.S.A. 39:6A-12 OF THE NO-FAULT ACT PREVENT AN INJURED PLAINTIFF FROM PRESENTING EVIDENCE OF HER FUTURE MEDICAL EXPENSES AT A CIVIL TRIAL AND RECOVERING DAMAGES FROM THE TORTFEASOR DEFENDANT FOR THOSE FUTURE EXPENSES WHEN PIP BENEFITS HAVE NOT BEEN EXHAUSTED?

The panel's ruling overrides what the Legislature clarified in the very language of the amended statute:

> Nothing in this section shall be construed to limit the right of recovery, against the tortfeasor, of uncompensated economic loss as defined by subsection k. of section 2 of L. 1972, c. 70 (C. 39:6A-2), including all uncompensated medical expenses not covered by the personal injury protection limits applicable to the injured party and sustained by the injured party. All medical expenses that exceed, or are unpaid or uncovered by any injured party's medical expense benefits personal injury protection limits, regardless of any health insurance coverage, are claimable by any injured party as against all liable parties, including any self-funded health care plans that assert valid liens.

The Legislature amended the statute to overturn the decision in Haines v. Taft, where this Court ruled that the statute precluded an injured party from suing other drivers to recover costs in excess of their PIP coverage. The Governor clarified that the statute was being amended to "ensure that low-income drivers who must settle for lesser PIP coverage options . . . will not be denied the ability to

recover their unreimbursed medical expenses from those who caused their injuries." Governor's Signing Statement to S. 2432 & S. 3963 (Aug. 15, 2019) (L. 2019, c. 244, 245). The only requirement for recovery is that the medical expenses remain unpaid—meaning the plaintiff cannot receive multiple recoveries for the same damages. Bardis v. First Trenton Ins. Co., 199 N.J. 265 (2009). That does not mean that an injured plaintiff like Ms. Murray, who has not recovered damages for her future medical costs, cannot recover them from the person who actually caused the damages, as the panel has effectively ruled in this case.

Ruling that an injured plaintiff cannot recover damages for her future medical expenses in a civil trial against the tortfeasor also undermines the purpose of the UCJF that the Court noted in Jimenez v. Baglieri, 152 N.J. 337, 342 (1998), stating, "It is well settled that the purpose of the UCJF is to 'provide a measure of relief to persons who sustain losses inflicted by financially irresponsible or unknown owners and operators of motor vehicles, where such persons would otherwise be remediless.'" Defendant Marrone is not an unknown operator; the plaintiff has sued him to recover damages for the harm he caused. Interpreting the statute as preventing an injured plaintiff from recovering the full range of damages from the tortfeasor does not sensibly reflect the Legislature's intent in enacting the amendment.

Indeed, the panel's hyper-technical interpretation of the statute undermines the Legislature's objective of "cost containment" rather than advancing it. The panel noted that the statute's long-standing principal goal is to ensure that the assets of the UCJF Fund are preserved as much as possible, PA16 (citing Jimenez, supra, 152 N.J. 347). That goal is advanced by allowing an injured plaintiff to recover damages from the actual tortfeasor; restricting the injured plaintiff to recovery solely from the UCJF Fund diminishes the Fund's assets instead of preserving them. As the Court noted, NJPLIGA did not participate in the trial or the appeal, yet the ruling puts NJPLIGA's obligation before that of the tort-feasor.

The panel's ruling that an injured plaintiff is limited to seeking recovery from the UCJF disregards "that the UCJF is a remedy of last resort, rather than one that will serve as a supplement to other remedies." Sanders v. Langemeier, 199 N.J. 366, 379 (2009) (citing Caballero v. Martinez, 186 N.J. 548, 555 (2006); Shaw v. City of Jersey City, 174 N.J. 567, 572 (2002)).

The panel's ruling also disregards long-established New Jersey law that permits an injured plaintiff to seek fair and reasonable compensation for future medical expenses as part of her damages claim against a tortfeasor, Coll v. Sherry, 29 N.J. 166, 174 (1959); Schroeder v. Perkel, 87 N.J. 53, 69 (1981); Model Charge 8.11(I); see also Schroeder, supra, 87 N.J. 69 (affirming right to recover at trial damages "for future medical and hospital expenses"). The Legislature has never

altered this standard of New Jersey law; it would have done so just as it did when amending the statute immediately after this Court's decision in Taft v. Haines.

The panel's ruling is wrong for other reasons, too.

N.J.S.A. 39:6A-12 does not clearly apply to Ms. Murray's case. The statute is entitled, "Inadmissibility of evidence of losses **collectible under personal injury protection coverage**" (emphasis added), and provides in part,

> Inadmissibility of evidence of losses **collectible under personal injury protection coverage**. Except as may be required in an action brought pursuant to section 20 of P.L.1983, c. 362 (C.39:6A-9.1), evidence of the amounts collectible or paid **under a standard automobile insurance policy** pursuant to sections 4 and 10 of P.L.1972, c. 70 (C.39:6A-4 and 39:6A-10), amounts collectible or paid for medical expense benefits **under a basic automobile insurance policy** pursuant to section 4 of P.L.1998, c. 21 (C.39:6A-3.1) and amounts collectible or paid for benefits **under a special automobile insurance policy** pursuant to section 45 of P.L.2003, c. 89 (C.39:6A-3.3), to an injured person, including the amounts of any deductibles, copayments or exclusions, including exclusions pursuant to subsection d. of section 13 of P.L.1983, c. 362 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action for recovery of damages for bodily injury by such injured person. [emphasis added]

Ms. Murray's case involves neither benefits that are "collectible under personal injury protection coverage" nor benefits that are payable "under a standard automobile insurance policy." Instead, due to the involvement of an uninsured motorist (Punina), it concerns claims against the Unsatisfied Claim and Judgment Fund Law administered by the Property and Liability Guaranty Association ("PLIGA"). Payments from the Fund do not qualify as "losses

collectible under personal injury protection coverage" according to N.J.S.A. 39:6A-12, and the UCJF is not considered any of the automobile insurance policies outlined in the statute. As the statute provides,

> The court shall instruct the jury that, in arriving at a verdict as to the amount of the damages for noneconomic loss to be recovered by the injured person, the jury shall not speculate as to the amount of the medical expense benefits paid or payable **by an automobile insurer** under personal injury protection coverage payable **under a standard automobile insurance policy** pursuant to sections 4 and 10 of P.L.1972, c. 70 (C.39:6A-4 and 39:6A-10), medical expense benefits **under a basic automobile insurance policy** pursuant to section 4 of P.L.1998, c. 21 (C.39:6A-3.1) or benefits under a special automobile insurance policy pursuant to section 45 of P.L.2003, c. 89 (C.39:6A-3.3) to the injured person, nor shall they speculate as to the amount of benefits **paid or payable by a health insurer, health maintenance organization or governmental agency under subsection d. of section 13 of P.L.1983, c. 362 (C.39:6A-4.3).** [emphasis added]

See also Unsatisfied Claim & Judgment Fund Bd. v. New Jersey Mfrs. Ins. Co., 138 N.J. 185 (1994) (noting "UCJF Law … is quite different from the No–Fault Law, both in purpose and effect," showing that N.J.S.A. 39:6A-12, directed to benefits "collectible under personal injury protection coverage" and "under a standard automobile insurance policy," does not apply equally to UCJF claims).

The panel stated that Ms. Murray's future medical expenses are "collectible" under N.J.S.A. 39:6A-12. However, the common definition of "collectible" refers to amounts that are due and payable for present payment. Dr. Perry testified regarding procedures that the plaintiff would likely require in the future. The estimated costs of these procedures are not "collectible" under that common

definition. These medical procedures have not yet been scheduled, let alone performed. No bills have been issued for them. In no scenario would a carrier – and certainly not NJPLIGA – be legally obligated to pay the plaintiff for such anticipated but not yet incurred medical expenses costs.[1] Cf. Tullis v. Teial, 182 N.J. Super. 553 (App. Div. 1982) (reviewing bills for procedures that had been performed, not future bills for possible but yet to be performed procedures; PIP benefits "legally due" include "all reasonable medical expenses *incurred* as a result of personal injury sustained in an automobile accident"). This further illustrates that N.J.S.A. 39:6A-12 does not bar an injured plaintiff from presenting evidence of her future medical expenses at a civil trial and recovering damages for those expenses from the tortfeasor defendant.

Finally, there is no concern for a double recovery in that if plaintiff is awarded damages from the tortfeasor for future medical benefits, this award would be a defense as to any future claim for PIP benefits for future medical treatment.

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[1] This is consistent with the collateral source rule, which provides that a future benefit cannot be considered a collateral source when defendants cannot establish that it is "reasonably certain" that such benefits will be available to the plaintiff for the rest of her life. Parker v. Esposito, 291 N.J. Super. 560, 567 (App. Div. 1996). The claims the plaintiff makes to PLIGA for payment from the UCJF fund for any future medical treatment she may require are not reasonably ascertainable.

Reason for Granting Certification

For the reasons set forth above and detailed in the briefs submitted to the Appellate Division below, the petitioner requests that the Court grant Certification to clarify the application of the amended N.J.S.A. 39:6A-12: Does the statute prevent an injured plaintiff from introducing evidence of her future medical expenses at a civil trial and recovering damages for those future medical expenses from the tortfeasor defendant when PIP coverage has not been exhausted?

Conclusion and Certification

The undersigned certifies that this application is made in good faith, presents substantial questions, and is not brought for purposes of delay. In the event that the Petition is granted, Petitioner reserves the right to seek leave to file a brief pursuant to R. 2:12-11.

Respectfully submitted,

/s/ Daniel N. Epstein and
Michael Confusione

Counsel for Petitioner,
Lakita D. Murray

Dated: January 21, 2025