

The Banking statute is exclusive, and the powers sought may only be obtained by complying with the terms of that statute. They may not be granted to a corporation organized under the General Corporation Act. (*McCarter, Attorney General v. Imperial Trustee Co.*, 72 N. J. L. 42, 44 (Sup. Ct. 1905)).

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By: HAROLD KOLOVSKY,
Assistant Attorney General.

hk:d

JULY 21, 1955.

MR. W. LEWIS BAMBRICK,
Unsatisfied Claim and Judgment Fund,
222 West State Street,
Trenton, New Jersey.

MEMORANDUM OPINION P-21.

DEAR MR. BAMBRICK:

You have requested our opinion as to whether the owner of a stolen motor vehicle has a valid claim against the Unsatisfied Claim and Judgment Fund based on an unsatisfied judgment against the person who stole same for damages sustained to such vehicle as a result of an accident occurring while the vehicle was being operated by the thief. You have asked us to assume that the owner of the motor vehicle was not covered by any insurance policy under which he could be reimbursed for his damages.

In order to resolve this problem, it is necessary to consider the purpose for which the Unsatisfied Claim and Judgment Fund Act was enacted. Although no statement was appended to the Unsatisfied Claim and Judgment Fund Act, the purpose of the legislation was obviously to protect holders of judgments in so-called "negligence" actions based upon damage to property or injury to person by means of a motor vehicle. It was designed to eliminate the economic hardship which would otherwise be sustained by a holder of such an unsatisfied judgment who incurred property damage or personal injury by the negligent operation of a motor vehicle by another. In effect, it is a corollary to the Motor Vehicle Security-Responsibility Law, N. J. S. A. 39:6-23, et seq., which provides, among other things, for the suspension of the operator's license and registration certificate of a person who has failed to satisfy a judgment rendered against him for personal injury or property damage resulting from the ownership, maintenance, use, or operation of a motor vehicle.

Although the courts of New Jersey have not yet dealt with the Unsatisfied Claim and Judgment Fund Act, several cases have considered the Motorists' Financial Responsibility Law, R. S. 39:6-1, et seq., which was the predecessor of the

Motor Vehicle Security-Responsibility Law, N. J. S. A. 39:6-23, et seq. In *Garford Trucking, Inc. v. Hoffman*, 114 N. J. L. 522 (Sup. Ct. 1935), we find the following:

" . . . The Financial Responsibility Law of our State seeks to impose a penalty not for the failure to pay a judgment that is merely incidental, but rather does it impose a penalty for negligent driving . . ."

In the case presently under consideration, the action of the owner of the motor vehicle against the person who stole it is not grounded upon negligence of the thief in the operation of the motor vehicle; it is grounded upon the theft itself, and all damages flowing from same, in an action in the nature of trover and conversion. It is our opinion that an unsatisfied judgment in an action of this nature is not the type of judgment for which the Unsatisfied Claim and Judgment Fund is chargeable.

In *Sutherland on Statutory Construction*, Vol. 2, Sec. 4505, p. 323, we find the following:

"It must be understood, of course, that a well-drafted statute will in most cases and certainly should, present the words used with sufficient precision and accuracy that additional inquiry by the court will be unnecessary. But as all future circumstances cannot be anticipated by even the most far-sighted legislator the function of judicial interpretation cannot be completely avoided. When such a circumstance arises, certainly the safest starting point for interpretation will be the statute itself. But it is by no means the safest stopping point. Before the true meaning of the statute can be determined consideration must be given to the problem in society to which the legislature addressed itself, prior legislative consideration of the problem, the legislative history of the statute under litigation, and to the operation and administration of the statute prior to litigation."

It is our opinion that the owner of a stolen motor vehicle who obtains an unsatisfied judgment against the person who stole such motor vehicle by reason of damage to such motor vehicle while same was operated by the thief, is not entitled to payment by the Unsatisfied Claim and Judgment Fund.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

csj :b/mjd