



Garden State CLE
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GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

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LESSON PLAN AND EVALUATION**

DRIVING WITHOUT LIABILITY INSURANCE

With

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And

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Attorney

Program description

There is nothing more careless and irresponsible than driving without basic liability insurance. There are stiff penalties that come with this violation, if you're found guilty. This 1.0 credit CLE will teach you how to defend and prosecute these types of cases.

I. Introduction

- **Prosecutor in Hamilton Township, Mercer County, and Robbinsville Township, Mercer County**
- **Public Defender in Upper Freehold Township, Monmouth County, and Borough of Englishtown, Monmouth County**
- **Burlington County – private defense work**
- **Do take to heart the role of the prosecutor is not to get a conviction but to serve justice**
- **Prosecutor is to do individual justice in individual cases**
- **Initially people driving without liability insurance – there was not anything that could be done with those tickets**

II. Prosecutor Approach

- **Owner of vehicle who drove car without liability insurance but then a few days later obtained insurance – assuming no accident**
 - **Getting liability insurance a few days later shows good faith – often a financial issue in that the person could not afford it until that time**
 - **Normally would amend to failing to produce a valid insurance card, NJSA 39:3-29(c) - \$150 fine plus \$33 court costs and \$6 surcharge – no loss of license – avoid motor vehicle surcharge**
- **Owner of vehicle, no insurance, in accident without personal injury just property damage**
 - **Someone other than the State is affected by conduct of the owner/driver**
 - **Owners will get attorneys to deal with victim outside of court – if that is the case, the victim will come to court and advise that he/she has been made whole and interest of justice have been served**
 - **Amend to NJSA 39:3-29(c)**
 - **Look for defendant to make restitution of out of pocket expenses for victim, i.e. deductible**
- **What about if victim does not have collision insurance and therefore the damage must be paid out of pocket**
 - **Presumes person without insurance is cause of motor vehicle accident**
 - **Victim is going to be mad and must take a stronger approach**

- **Must resolve the case for the underlying offense charged, failing to have insurance**
- **State v. Hochman, 188 NJ Super 382 (App. Div. 1982) – if you are an owner or not, this is a strict liability offense – If you operate the vehicle on the highway, then you are guilty of the crime**
- **State v. Hayducka, 337 NJ Super 168 (App. Div. 2001) – statute penalizes all those who created the situation wherein the vehicle is placed on the road without liability insurance – so this could be the driver or the owner – no matter who is driving**
- **Easy prosecution for the State, given the presumptions that are afforded under NJSA 39:6B-2 – Driving without insurance – Penalties**
- **Police have stopped a vehicle and asked for insurance and presents an expired card – records check – driver is the owner – NJ car**
 - **No problem proving operation**
 - **No problem showing that it is a NJ car**
 - **How to prove no liability insurance – can argue to the court that the burden is on the defendant and in the absence of an offer by the defendant the court can draw the inference that there is no such insurance – this is under 39:6B-2**
- **NJSA 39:6B-2 “Failure to produce at the time of trial an insurance identification card or an insurance policy which was in force for the time of operation for which the offense is charged creates a rebuttable presumption that the person was uninsured when charged with a violation of this section.”**
 - **There are methods for the defendant to rebut the presumption but the court is almost required that if the presumption is not rebutted then must find that no such policy/insurance existed.**
 - **This is a permissive inference**
- **How does this make sense for a driver who is not the owner because the insurance is on the vehicle, not the person?**
- **Is this unconstitutional? – makes the defendant affirmatively do something at trial, as opposed to the normal system we have where the State must prove every element of the offense – this creates a permissive inference that the person is guilty**
- **The person in the best position to know if there was insurance is the defendant – therefore it seems reasonable that the burden be**

- on the defendant to present that evidence – but then is that constitutional?**
- **In the absence of evidence to the contrary, the judge would infer that there was no insurance**
- **Was legislature over reaching in the penalties for this statute? Penalties of severely onerous: license suspension for a year, fine up to \$1000, community service, surcharges – is this disproportionate to the offense?**
- **Getting insurance after the fact is not a defense but a mitigating factor**
- **Amendment to law was considered**
- **Sometimes a prosecutor will offer a plea with a license suspension but just not pursuant to 39:6B-2**
 - **NJSA 39:5-31 – the law invests the municipal court judges with the authority to suspend the driver’s license of any defendant convicted of a willful violation**
- **State v. Moran, 202 NJ 311 (2010) – municipal court judges would not attach a license suspension to a document violation, i.e. failing to exhibit a license/insurance card/registration**
- **In 2014, the Legislature has given prosecutor ability to deal with the offender differently – if a person after the violation gets liability insurance and brings proof to court, prosecutor can reduce the license suspension or remove the suspension in its entirety**
 - **As long as a person brings in proof of insurance which was obtained subsequent to summons and present to prosecutor and must be 1st time offender – sentence regarding license suspension can be eliminated on motion to the court**
 - **However, as a defendant, you are better with a NJSA 39:3-29 because the fines and penalties are much less**
 - **The change in the law merely adjusts the license suspension – does not reduce the fines and other penalties for the violation**
 - **As a prosecutor this is a helpful tool because loss of license is very difficult in NJ to maintain a job, etc.**
- **When the driver is NOT the owner of the vehicle**
 - **Requirement for State to prove knew or should have known no proof of insurance**
 - **How to prove this?**
 - **Rely on officer’s inquiry at time of the stop**

- **How is the driver related to the owner – married, familial relationship, live together**
 - **State can issue concurrent charge to owner of the vehicle as allowing the car to be driven without insurance**
 - **“should have known” because the parties are married?? Is this sufficient evidence – merely that they were married?**
 - **“should have” is difficult to prove – so need a lot of facts to place on the record, such as admissions, where vehicle kept, primary use of the driver**
 - **Non-owner/driver without more information – the likelihood is that the case will be resolved under 39:3-29**
 - **Difficult prosecutor given the facts available**
- III. Mistakes made by law enforcement in investigating this offense**
- **Vehicle is not registered in NJ and does not have insurance while driving through NJ**
 - **To proceed with this prosecution under 39:6B-2 – must prove that the vehicle is garaged in NJ**
 - **Most likely 6B-2 offense would go away under these circumstances**
 - **Usually resolved by 39:3-29**
 - **Vehicle is parked legally but not registered (unregistered vehicles cannot park on public streets in NJ) – police can give the car a ticket but can also tow – legally parked vehicle but is not insured is not a violation**
 - **For 6B-2 offense, vehicle must be operated – cannot be a parked vehicle**
 - **If you own a vehicle without insurance and park it anywhere, that is not a good idea as you have no ability for recourse since you don’t have insurance**
 - **Legislation in place that requires liability insurance even when not a moving violation**
 - **39:6A-4.5 – 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 action for recovery of economic or noneconomic loss sustained**

as a result of an accident while operating an uninsured automobile.

- **Risk that you put yourself in if driving without insurance is very large**
- **Cost of insurance weighted against other necessary expenses to provide for your family**

IV. Second Offenders

- **No step down provision in the statute (39:6B-2) – does not take into account when prior occurred – could be 30 years ago and it doesn't matter – still 2nd offender**
- **Fine up to \$5000 and jail time of 14 days, 30 days community service and 2 year license suspension**
- **Don't automatically get re-licensed – must show that you have liability insurance – DMV does not make it easy to get license back**
- **When there is a motor vehicle accident penalties are imposed for a 2nd offender, if not the entire \$5000 fine**
- **SLAP – Sheriff's Labor Assistance Program – is available for defendant's for jail time imposed under this statute**
- **Little latitude in the statute, except for the fine – jail, community service, and license suspension is not discretionary under the statute**
- **Prosecutors must evaluate the underlying driving conduct – what happened in the presence of the officer? – is there an accident? Who is at fault? Personal injury as a result of uninsured motorist?**
- **If person without insurance gets hit from behind and has very bad injuries – cannot file any cause of action against the guy who rear-ended him – does this come into play or consideration in resolving the case?**
- **Look to when prior offense took place**
- **Look at whether car is insured when the person comes to court or have another vehicle and the vehicle is insured, then bring proof to court – show that person took corrective action on their own**
- **If person is without a car, then no need for liability insurance – difficult to address if person does not have a car but then expect that person to get insurance in the future**

- **What factors are going to be significant – damage? Restitution? Personal injury? What can you do to clean up your own mess – in advance of going to court?**
 - **Policy should be purchased before the day of court**
 - **Why did the person not have insurance – what is the hardship that prevented client from getting insurance**
 - **Did the policy lapse in the past?**
 - **Why was the policy cancelled in the first place?**
 - **Hardship suffered by client for loss of license and other penalties for violation?**
 - **If there is an accident – what client conduct contributed to accident?**
- **All these factors are not relevant for the statute, but relevant for consideration by the prosecutor for a lesser offense**
- **Main goal of the legislation now is to get insurance even if you didn't have insurance at the time of the offense – if come to court after the fact and have insurance, then no license suspension – new law encourages people to get insurance (not for 2nd offenders but you should still pitch this to the prosecutor)**
 - **Benefits public at large**
- **Change in law occurred January 2014**

V. The Statute – Black Letter Law

- **State v. Hochman (cited above)**
- **NJSA 39:6B-1 – (a) Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle wherein such coverage shall be at least in: (1) an amount or limit of \$15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and (2) an amount or limit, subject to such limit for any one person so injured or killed, of \$30,000.00, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and (3) an amount or limit of \$5,000.00, exclusive of interest and costs, for damage to property in any one accident.**

- **Subsection (b) – basic policy**
- **Subsection (c) – “special automobile insurance policy” – for those who are covered by Medicaid and under other social welfare programs – not a great deal of insurance and little coverage and guarantees but still legal under the statute to protect against a violation – significantly reduced premiums**
- **NJSA 39:6B-1 imposes the duty to maintain insurance**
- **NJSA 39:6B-2 has the penalties for violating the statute - An owner or registrant of a motor vehicle registered or principally garaged in this State who operates or causes to be operated a motor vehicle upon any public road or highway in this State without motor vehicle liability insurance coverage required by P.L.1972, c.197 (C.39:6B-1 et seq.), and an operator who operates or causes a motor vehicle to be operated and who knows or should know from the attendant circumstances that the motor vehicle is without motor vehicle liability insurance coverage required by P.L.1972, c.197 (C.39:6B-1 et seq.).**
 - **Operators who are not owners is difficult for a prosecutor to prove**
- **Difference between “owner” and “registrant”**
- **Penalties – statute amended in January 2014 regarding loss of license**
 - **first offense, to a fine of not less than \$300 nor more than \$1,000 and a period of community service to be determined by the court. The court also shall suspend the person's right to operate a motor vehicle over the highways of this State for a period of one year from the date of conviction**
 - **Also DMV surcharges of \$250 per year for 3 years**
 - **9 insurance eligibility points**
 - **Second offense: the person shall be subject to a fine of up to \$5,000 and shall be subject to imprisonment for a term of 14 days and shall be ordered by the court to perform community service for a period of 30 days, which shall be of a form and on terms as the court shall deem appropriate under the circumstances, and shall forfeit the person's right to operate a motor vehicle for a period of two years from the date of the conviction**
 - **Surcharge also applies for 2nd offense (\$250 per year for 3 years)**
 - **9 insurance eligibility points**

- **After a conviction, insurance will be more expensive when you go to get insurance**
- **After second offense: “after the expiration of the forfeiture, the person may make application to the Chief Administrator of the New Jersey Motor Vehicle Commission for a license to operate a motor vehicle, which application may be granted at the discretion of the chief administrator. The chief administrator's discretion shall be based upon an assessment of the likelihood that the individual will operate or cause a motor vehicle to be operated in the future without the insurance coverage required by this act. A complaint for violation of this act may be made to a municipal court at any time within six months after the date of the alleged offense.”**
 - **May want to bring in a fully paid insurance policy when you go to get your license returned**
 - **Usual statute of limitations is stated elsewhere in Title 39 – this statute has a separate statute of limitations**
- **If victim of an accident comes in and files a complaint for this statute, treated as if an officer wrote the ticket – must alert victim that restitution is not part of motor vehicle penalties – maybe want to mediate with driver**

VI. Words of Wisdom

- **If client has 6B-2 offense:**
 - **bring in insurance after the fact**
 - **contrite client and explain why the situation happened so that prosecutor can explain to the judge for plea**
 - **show why cancellation occurred**
 - **show impact on parties other than the defendant**
- **Do not present false or fraudulent insurance – counsel clients to not present fraudulent documents – criminal and civil liability under those circumstances**