The attached opinion has not been reviewed by the Final Disposition Unit or filed.  It may be subject to further changes and remains confidential until filed.

FROM: JUDGE SUSSWEIN

RE: SCOTT MALZBERG v. CAREN JOSEY

DOCKET NO. A-2883-20

DATE: 2

S Q U I B

This case presents a question of first impression regarding the scope of the Transportation Network Company Safety and Regulatory Act (TNCSRA or Act), N.J.S.A. 39:5H-1 to -27. The TNCSRA, which was enacted in 2017, comprehensively regulates companies and drivers that use a digital network such as a mobile phone application (app) to connect a "rider" to a "prearranged ride." Plaintiff was injured in a motor vehicle accident while he was operating his motorcycle as an Uber Eats delivery driver. The novel legal issue raised in this appeal is whether the Act—which requires "transportation network companies" to provide at least $1.5 million in underinsured motorist coverage—protects drivers while they are delivering food and not just when they are in the process of transporting passengers. The court concludes that the Act by its literal terms applies only to the prearranged transport of riders and not to the prearranged delivery of food.

In determining the scope of the statute's intended reach, that is, its "overall meaning," the court pays special attention to the definition section, noting that the very existence—or non-existence—of specific definitions reveals the basic concepts and principles the Legislature deemed to be especially important, warranting precise and explicit formulations. The Legislature's decision to define certain terms but not others, the court reasons, can provide insight into the overall meaning of the statutory scheme and the scope of its reach. In this instance, nothing in the definition section—or any other section of the Act for that matter—refers to the delivery of food. The absence of any reference to food delivery in the definition section stands in stark contrast to the interrelated definitions that refer explicitly and repeatedly to "rides" and "riders," which clearly denote the transport of human passengers.

Because the primary question posed in this case is easily resolved under a plain-text analysis, the court acknowledges that it need not consider extrinsic sources to determine legislative intent. The court nonetheless adds in the interest of completeness that nothing in the legislative history supports plaintiff's contention that the Act applies to food delivery services. The court further notes that regulations promulgated by the Motor Vehicle Commission support the court's interpretation as to the scope of the Act.

The court acknowledges that by enacting the TNCSRA, the Legislature recognized the commercial and societal value of new technologies that use mobile digital networks to connect customers with service providers. But while the use of an app is necessary to trigger the Act's provisions, that alone is not sufficient. The court concludes that to fall within the Act's jurisdiction—and thus to invoke the protections of its minimum insurance coverage provisions—the app-based connection must be used to arrange a ride for a human passenger.

The court further acknowledges that while the TNCSRA is of comparatively recent vintage, it was enacted before the COVID-19 pandemic, during which the imperative for social distancing simultaneously increased the demand for home delivery of food and reduced the demand for ridesharing. The court emphasizes that the evolution of the supply and demand marketplace since the TNCSRA was enacted does not change its plain text. While there may be circumstances, not present here, where it is necessary and appropriate to teach an old law to do new tricks, a statute's text does not evolve sua sponte. Reviewing courts, moreover, must afford due deference to the legislative process. Accordingly, the court stresses, it is for the political branches, not the Judiciary, to amend a statute to account for new developments and to fill any "holes" in the statute's scope and reach.