

Ins. Law § 3420(f): Requirement of Uninsured Motorist Coverage Does Not Extend to Unregulated Self-Insurers of Police Vehicles

Paul S. Donohue

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Donohue, Paul S. (1989) "Ins. Law § 3420(f): Requirement of Uninsured Motorist Coverage Does Not Extend to Unregulated Self-Insurers of Police Vehicles," *St. John's Law Review*: Vol. 63 : No. 3 , Article 15.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol63/iss3/15>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

ering the unique facts and circumstances of each case.

Laura B. Weiner

INSURANCE LAW

Ins. Law § 3420(f): Requirement of uninsured motorist coverage does not extend to unregulated self-insurers of police vehicles

Mandatory uninsured motorist coverage¹ was implemented in 1958 to eliminate the loopholes of compulsory automobile insurance² by decreasing the number of incidents in which an innocent victim of an automobile accident was left uncompensated because of the financial irresponsibility of the offending motorist.³ Since its

¹ N.Y. INS. LAW §§ 3420(f), 5201-5225 (McKinney 1985). In 1958, § 3420(f) (former § 167-2a) and §§ 5201-5225 (former §§ 600-626) were jointly enacted to indemnify innocent victims through the Motor Vehicle Indemnification Corporation ("MVAIC"). Ch. 759, §§ 2, 3, 4, [1958] N.Y. Laws 1624 (McKinney). In 1965, the legislature assigned a portion of the MVAIC's responsibilities to insurance companies by dividing innocent victims into two groups—insured and uninsured. Ch. 322, §§ 1, 3, [1965] N.Y. Laws 1026 (McKinney); see Memorandum of American Insurance Association, *reprinted in* [1965] N.Y. LEGIS. ANN. 381-82. [hereinafter 1965 N.Y. LEGIS. ANN.].

² See Bohlinger, 1958 Insurance Legislation, *reprinted in* [1958] N.Y. LEGIS. ANN. 244-45 [hereinafter 1958 N.Y. LEGIS. ANN., Bohlinger]; Memorandum of Assemblyman Steingut, *reprinted in* [1958] N.Y. LEGIS. ANN. 299-302 [hereinafter 1958 N.Y. LEGIS. ANN., Steingut]. N.Y. Gov. Mess. to Legislature (Jan. 23, 1958), *reprinted in* [1958], N.Y. LEGIS. ANN. 436-37. Compulsory automobile insurance, mandated by the Motor Vehicle Financial Security Act, requires motorists, under penalty of revocation or suspension of their license or registration, to obtain liability insurance. N.Y. VEH. & TRAF. LAW §§ 310-321 (McKinney 1986). However, the legislature quickly realized that the act did not give recourse to innocent victims of financially irresponsible motorists. 1958 N.Y. LEGIS. ANN., Bohlinger, *supra*, at 244-45.

³ See 8C J. APPLEMAN, INSURANCE LAW AND PRACTICE § 5067.45 (1981) (statute designed to provide monetary remedy to victims of financially irresponsible motorists).

Uninsured motorist coverage was enacted to extend protection to previously uncompensated victims of accidents involving: 1) out-of-state uninsured vehicles; 2) hit and run vehicles; 3) registered motor vehicles with ineffective policies; 4) stolen motor vehicles; 5) motor vehicles operated without permission; 6) insured motor vehicles whose liability has been disclaimed by the insurer, and 7) unregistered motor vehicles. N.Y. INS. LAW §§ 3420(f)(1), 5201 (McKinney 1985); see *Passaro v. Metro. Property & Liab. Ins. Co.*, 128 Misc. 2d 21, 23-24, 487 N.Y.S.2d 1009, 1011 (Sup. Ct. Queens County 1985) (uninsured person is considered uninsured for purposes of supplementary excess liability), *aff'd*, 124 App. Div. 2d 647, 507 N.Y.S.2d 836 (2d Dep't 1987).

Innocent victims are divided into two categories depending upon whether or not the victim is covered by personal automobile insurance. See N.Y. INS. LAW §§ 3420(f) (McKinney 1985) (insured victims), 5201-5208 (uninsured victims); see also *Matter of St. John*, 105 App. Div. 2d 530, 530-31, 481 N.Y.S.2d 787, 789 (3d Dep't 1984) (those dubbed "insured" or

adoption, uninsured motorist coverage has been either expressly or impliedly included in all insurance policies and certificates of self-insurance.⁴ In addition, the Court of Appeals, following a "policy of inclusion"⁵ extended application of the requirement to provide un-

"qualified" uninsured persons under MVAIC are members of "mutually exclusive" categories for purposes of recovery); Note, *The Problem of the Financially Irresponsible Motorist—New York's MVAIC*, 65 COLUM. L. REV. 1075, 1077-82 (1965) (analysis of requirements for each classification).

These classifications are used to determine the source of the victim's compensation. See *St. John*, 105 App. Div. 2d at 532, 481 N.Y.S.2d at 789 (insured person must collect under § 3420(f) or if uninsured file with MVAIC). The insured person, under section 3420, must seek recourse from his insurer through the uninsured motorist indorsement statutorily included in his personal policy. N.Y. INS. LAW § 3420(f) (McKinney 1985). The uninsured person must file under MVAIC, and will receive compensation only if he is a "qualified person." N.Y. INS. LAW § 5202(b) (McKinney 1985); see, e.g., *Rice v. Allstate Ins. Co.*, 32 N.Y.2d 6, 11-12, 295 N.E.2d 647, 650, 342 N.Y.S.2d 845, 849-50 (1973) (once victim's status was established as uninsured, she was directed to proceed against MVAIC).

⁴ See N.Y. INS. LAW § 3420(f)(1) (McKinney 1985). Section 3420(f)(1) expressly provides that "[n]o policy insuring against loss . . . shall be issued or delivered . . . unless it contains [an uninsured motorist indorsement]." *Id.* If the provision is not expressly included in the policy, the mandatory indorsement will be statutorily implied. *St. John*, 105 App. Div. 2d at 532, 481 N.Y.S.2d at 789. Similarly, financial security bonds must also include the requisite uninsured motorist coverage. N.Y. VEH. & TRAF. LAW § 312(2) (McKinney 1986) (security bonds are subject to "the same terms and conditions as are required for an owner's policy of liability insurance").

Alternatively, a certificate of self-insurance may be filed if the filing entity is within one of the following three categories: 1) a person with more than twenty-five motor vehicles registered in New York, *id.* § 316; 2) a municipality, *id.* § 370(1); or 3) a passenger carrier for hire with more than twenty-five motor vehicles registered in New York, *id.* § 370(3). Prior to certification, a self-insurer must prove his financial ability to satisfy possible future liabilities. *Id.* §§ 316, 370(3); see *id.* § 311(8) (a self-insurer is defined as a person who has been declared "financially responsible"); see also *New York City Transit Auth. v. Thom*, 70 App. Div. 2d 158, 171, 419 N.Y.S.2d 689, 697 (2d Dep't 1979) (self-insurer is assumed to be capable of satisfying adverse claims), *aff'd*, 52 N.Y.2d 1032, 420 N.E.2d 385, 438 N.Y.S.2d 504 (1981). While the self-insurer has the "privilege of saving insurance premiums," the legislature did not intend to decrease a self-insurer's liability to innocent victims. *Allstate Ins. Co. v. Shaw*, 52 N.Y.2d 818, 820, 418 N.E.2d 388, 389, 436 N.Y.S.2d 873, 874 (1980); see also *Thom*, 70 App. Div. 2d at 171, 419 N.Y.S.2d at 696-98 (irrational to exempt passenger carriers). See generally 8C J. APPLEMAN, *supra* note 3, § 5071.85, at 109 (self-insurers are not relieved of financial liabilities).

⁵ See *Shaw*, 52 N.Y.2d at 819-20, 418 N.E.2d at 389, 436 N.Y.S.2d at 874. "The aim, to make the prescribed compensation available in all such cases, would appear to call for a policy of inclusion rather than exclusion in determining whom it covers." *Country-Wide Ins. Co. v. Wagoner*, 45 N.Y.2d 581, 586, 384 N.E.2d 653, 655, 412 N.Y.S.2d 106, 108 (1978). When interpreting the uninsured motorist provisions, the court's emphasis should favor the victim. See *Shaw*, 52 N.Y.2d at 819-20, 418 N.E.2d at 389, 436 N.Y.S.2d at 874. Further, the provisions should be "liberally applied." See *State-Wide Ins. Co. v. Curry*, 43 N.Y.2d 298, 303, 372 N.E.2d 31, 33, 401 N.Y.S.2d 196, 199 (1977); see also N.Y. INS. LAW § 5201 (McKinney 1985) (elimination of loopholes in insurance law is major public concern); N.Y. VEH. & TRAF. LAW § 310 (McKinney 1986) (same).

insured motorist coverage to all unregulated self-insurers,⁶ thus resulting in the compensation of innocent victims of financially irresponsible motorists in almost all scenarios.⁷ Recently, however, in *State Farm Mutual Automobile Insurance Company v. Amato*,⁸ the Court of Appeals held that the City of New York ("the City"), an unregulated self-insurer, was not statutorily obligated to provide uninsured motorist coverage to police officers injured in their police vehicles when struck by an uninsured motorist.⁹

In *State Farm*, Amato, a New York City Police Officer, was injured when his police scooter was struck by a stolen taxi cab.¹⁰

⁶ See *Country-Wide Ins. Co. v. Manning*, 96 App. Div. 2d 471, 472, 464 N.Y.S.2d 786, 787 (1st Dep't 1983), *aff'd*, 62 N.Y.2d 748, 465 N.E.2d 370, 476 N.Y.S.2d 831 (1984). Unregulated self-insurers are differentiated from regulated self-insurers because the former are statutorily exempt from certain financial responsibility requirements. See *Nassau Ins. Co. v. Guarascio*, 82 App. Div. 2d 505, 510-11, 442 N.Y.S.2d 83, 87 (2d Dep't 1981). Unregulated self-insurers include "the United States, any state, [and] any political subdivision of any state" [hereinafter political subdivisions] which are exempt from article 6 (Motor Vehicle Financial Security Act), N.Y. VEH. & TRAF. LAW § 321(1) (McKinney 1986), article 7 (Motor Vehicle Safety Responsibility Act), *id.* at § 360, and municipalities which are exempt from article 8 (Indemnity Bonds or Insurance Policies on Vehicles Transporting Passengers for Hire). *Id.* at § 370(1).

In *Manning*, the Appellate Division held the Department of Transportation ("DOT"), an unregulated self-insurer, primarily responsible for providing uninsured motorist coverage to an employee injured while driving a DOT vehicle. 96 App. Div. 2d at 472, 464 N.Y.S.2d at 787. The court rejected the argument that the DOT's exclusion under section 370(1) of the Vehicle and Traffic Law exempted them from providing uninsured motorist coverage. *Id.* While the majority did not expressly refute the existence of a liability exemption for political subdivisions, it refused to adopt the dissent's reasoning that the exemptions freed political subdivisions not only from insurance requirements but also from liability except where expressly included—e.g. no fault. *Manning*, 62 N.Y.2d at 752-53, 465 N.E.2d at 371-72, 476 N.Y.S.2d at 832-33 (Meyer, J., dissenting); see N.Y. INS. LAW §§ 5101-5108 (McKinney 1985 & Supp. 1989).

Prior to *Manning*, the *Thom* court also had required an unregulated self-insurer to provide uninsured motorist coverage. See *Thom*, 52 N.Y.2d at 1033, 420 N.E.2d at 385, 438 N.Y.S.2d at 504. However, unlike in *Manning*, the *Thom* court held that the Transit Authority did "not qualify as a political subdivision of the State for purposes of [section 370(1) of the Vehicle & Traffic Law]," and therefore was not exempt. *Id.*; see also *Manhattan & Bronx Surface Transit Operating Auth. v. Coccia*, 118 Misc. 2d 378, 381, 460 N.Y.S.2d 446, 448-49 (Sup. Ct. Kings County 1983) (no exemption from mandatory arbitration for self-insurer); cf. *Nassau Ins. Co.*, 82 App. Div. 2d at 511, 442 N.Y.S.2d at 87 (city, unregulated self-insurer, not obligated to provide uninsured motorist coverage).

⁷ See *supra* notes 2-3 and accompanying text (uninsured motorist provision extended protection to close loopholes).

⁸ 72 N.Y.2d 288, 528 N.E.2d 162, 532 N.Y.S.2d 239 (1988).

⁹ *Id.* at 295, 528 N.E.2d at 165, 532 N.Y.S.2d at 242.

¹⁰ *Id.* at 290, 528 N.E.2d at 163, 532 N.Y.S.2d at 240. The Appellate Division Second Department, joined *State Farm's* appeal with the claim of New York City Police Officer John Rutherford who, in a separate incident, was injured when his police vehicle was hit by an uninsured motorist. *Id.* at 291, 528 N.E.2d at 163, 532 N.Y.S.2d at 240.

After being denied recourse by both the City and the Motor Vehicle Accident Indemnification Corporation ("MVAIC"), Amato filed an uninsured motorist claim with State Farm Mutual Life Insurance Company ("State Farm"), his personal automobile insurer, pursuant to section 3420(f) of the Insurance Law.¹¹ After his claim was initially rejected, Amato demanded arbitration as mandated by the uninsured motorist indorsement in his policy.¹² State Farm commenced this action to stay arbitration, claiming that the City, as a self-insurer, had the "primary obligation" to provide uninsured motorist coverage.¹³ The City denied that its responsibility to provide uninsured motorist coverage extended to injuries sustained in accidents involving police vehicles.¹⁴

The Supreme Court, Queens County, agreed with the City and denied State Farm's petition to stay arbitration.¹⁵ The Appellate Division, Second Department, unanimously reversing the lower court, held that section 3420(f) of the Insurance Law does not provide an exclusion for police vehicles from uninsured motorist coverage.¹⁶

In reversing the judgment of the Appellate Division, the Court of Appeals held that a police vehicle was not a "motor vehicle" for the purpose of section 3420(f),¹⁷ and therefore the City was not

¹¹ *Id.* at 290-91, 528 N.E.2d at 163, 532 N.Y.S.2d at 240. The City claimed that § 320 of the Vehicle and Traffic Law excluded municipalities from providing uninsured motorist coverage. *State Farm Mut. Ins. Co. v. Amato*, 129 App. Div. 2d 221, 222, 517 N.Y.S.2d 728, 729 (2d Dep't 1987), *rev'd*, 72 N.Y.2d 288, 528 N.E.2d 162, 532 N.Y.S.2d 239 (1988). MVAIC denied coverage on the ground that Amato was not an uninsured person. 72 N.Y.2d at 291, 528 N.E.2d at 163, 532 N.Y.S.2d at 240.

¹² 72 N.Y.2d at 291, 528 N.E.2d at 163, 532 N.Y.S.2d at 240.

¹³ *Id.*

¹⁴ *State Farm*, 129 App. Div. 2d at 223-25, 517 N.Y.S.2d at 730-31. The City argued that § 5202(a) of the Insurance Law excluded the City from providing uninsured motorist coverage for police vehicles. *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 228, 517 N.Y.S.2d at 733. The court held that the exclusion for police vehicles under section 5202(a) was inapplicable and that the City must provide uninsured motorist coverage to the police officers. *Id.*; *see also* *Sentry Ins. Co. v. Gallagher*, 131 App. Div. 2d 855, 855, 517 N.Y.S.2d 733, 734 (2d Dep't 1987) (same).

¹⁷ 72 N.Y.2d at 295, 528 N.E.2d at 165, 532 N.Y.S.2d at 242. Since the legislature did not expressly define "motor vehicle" in section 3420(f) of the Insurance Law, the court applied the definition of "motor vehicle" found in section 3420(e) of the Insurance Law. *Id.* at 294, 528 N.E.2d at 165, 532 N.Y.S.2d at 242. Section 3420(e) defines a "vehicle" pursuant to § 388 of the Vehicle and Traffic Law, which states: "'vehicle' means a 'motor vehicle', as defined in section one hundred and twenty-five of this chapter, except fire and police vehicles." N.Y. VEH. & TRAF. LAW § 388(2)(McKinney 1985); *see also* *Williams v. City of New York*, 144 App. Div. 2d 553, 554, 534 N.Y.S.2d 222, 223 (2d Dep't 1988) (court applied *State*

obligated to provide uninsured motorist coverage.¹⁸ Judge Alexander, writing for the court, reasoned that since section 3420(e) of the Insurance Law exempts New York City from providing liability insurance for death or bodily injury arising from accidents involving police vehicles,¹⁹ it would be "illogical to assume that . . . the City is nevertheless required to provide uninsured motorist coverage for its police vehicles."²⁰ In addition, Judge Alexander noted the police officer would be compensated as a beneficiary of his personal automobile insurance policy.²¹

In a strong dissent, Chief Judge Wachtler, believing the court reached "an illogical result," argued that section 3420(e) of the Insurance Law merely exempted the City from purchasing liability insurance for police vehicles.²² Applying this special exemption to section 3420(f), which "requires an insurer of a motor vehicle to

Farm holding to similar facts).

¹⁸ 72 N.Y.2d at 295, 528 N.E.2d at 165, 532 N.Y.S.2d at 242. The court did recognize, however, that the City does have a general obligation to provide uninsured motorist coverage. *Id.* at 294, 528 N.E.2d at 164-65, 532 N.Y.S.2d at 242; *see also* Country-Wide Ins. Co. v. Manning, 96 App. Div. 2d 471, 472, 464 N.Y.S.2d 787, 788 (1st Dep't 1983)(unregulated self-insurer responsible to provide uninsured motorist coverage), *aff'd*, 62 N.Y.2d 748, 465 N.E.2d 370, 476 N.Y.S.2d 831 (1984). The court expressly distinguished *State Farm* from *Manning* by emphasizing that while *Manning* involved a DOT vehicle, *State Farm* involved a police vehicle "specifically excluded" by statute. 72 N.Y.2d at 294, 528 N.E.2d at 165, 532 N.Y.S.2d at 242.

¹⁹ 72 N.Y.2d at 294, 528 N.E.2d at 165, 532 N.Y.S.2d at 242. Section 3420(e) states in pertinent part:

No policy or contract of personal injury liability insurance . . . covering liability arising from the ownership . . . of any vehicle as defined in section three hundred eighty-eight of the vehicle and traffic law . . . shall be issued . . . unless it contains a provision insuring the named insured against liability for death or injury sustained

N.Y. INS. LAW § 3420(e) (McKinney 1985). Section 388 of the Vehicle and Traffic Law expressly excludes "police vehicles." N.Y. VEH. & TRAF. LAW § 388(2) (McKinney 1986).

²⁰ 72 N.Y.2d at 294, 528 N.E.2d at 165, 532 N.Y.S.2d at 242.

²¹ *Id.* at 293 n.1, 528 N.E.2d at 164 n.1, 532 N.Y.S.2d at 241 n.1. However, Amato would not be able to seek recourse from *State Farm* because the court's holding also excludes police vehicles in insurance policies. *See id.* at 294, 528 N.E.2d at 165, 532 N.Y.S.2d at 242; *see also infra* note 25 and accompanying text.

²² 72 N.Y.2d at 295-96, 528 N.E.2d at 165-66, 532 N.Y.S.2d at 243 (Wachtler, C.J., dissenting). The exemption from purchasing liability insurance or proving financial responsibility recognizes that political subdivisions are "financially capable of paying for injuries caused by police vehicles." *Id.*; *see, e.g.*, N.Y. VEH. & TRAF. LAW §§ 321(1), 360 (McKinney 1986) (exemptions from articles 6 and 7 of the Vehicle and Traffic Law). The exemption "does not relieve governmental entities from legal responsibility for injuries caused by the operation of police vehicles." 72 N.Y.2d at 295, 528 N.E.2d at 166, 532 N.Y.S.2d at 243 (Wachtler, C.J., dissenting); *see also Manning*, 96 App. Div. 2d at 472, 464 N.Y.S.2d at 787 (exclusion of municipality under § 370(1) of Insurance Law does not preclude liability); *supra* note 6 (unregulated self-insurers must provide uninsured motorist coverage).

pay for injuries sustained," would permit the City to escape liability and contradict legislative intent.²³

It is submitted that the Court of Appeals, by utilizing section 3420(e) to define "motor vehicles," applied the incorrect statutory definition of "motor vehicle" to section 3420(f), and, as a result, created a new loophole, leaving innocent victims of accidents involving police vehicles uncompensated.²⁴ While it is clear that under this decision Amato may not proceed against the City,²⁵ it is asserted that he may also be precluded from recovering from his personal insurer because the uninsured motorist indorsement in his policy "has no application to police vehicles."²⁶ This result is inconsistent with legislative intent and against public policy.²⁷ Moreover, it is suggested that the legislature intended to apply the definition of "motor vehicle" as defined in section 5202(a) of the Insurance Law for claims arising under the MVAIC.²⁸ The applica-

²³ *State Farm*, 72 N.Y.2d at 296, 528 N.E.2d at 166, 532 N.Y.S.2d at 243 (Wachtler, C. J., dissenting); see *supra* note 3 and accompanying text (purpose of uninsured motorist coverage is to compensate innocent victims).

²⁴ The *State Farm* holding creates an arbitrary "loophole" which excludes insured victims of accidents involving police vehicles from receiving compensation but allows uninsured victims to recover under MVAIC.

²⁵ 72 N.Y.2d at 295, 528 N.E.2d at 164, 532 N.Y.S.2d at 242.

²⁶ *Id.*

²⁷ See 1958 N.Y. LEGIS. ANN., Bohlinger, *supra* note 2, at 244-45; 1958 N.Y. LEGIS. ANN., Steingut, *supra* note 2, at 299. The purpose of the uninsured motorist coverage is to provide compensation for innocent victims where compensation is otherwise unavailable. See *supra* notes 2-3 and accompanying text (coverage implemented to fill gaps of compulsory automobile law); *supra* note 5 and accompanying text (broad reading of provision to aid innocent victims of financially irresponsible motorists is consistent with legislative intent).

²⁸ See N.Y. INS. LAW § 5202(a) (McKinney 1985). "Motor vehicle" under § 5202(a) of the Insurance Law is defined as "a motor vehicle as defined in section one-hundred twenty-five of the vehicle and traffic law . . . and shall exclude fire and police vehicles." *Id.* While this definition is on its face identical to section 388(2), see *supra* note 19, it is submitted that "police vehicles" as intended in section 5202(a) only excludes police vehicles operated negligently.

Legislative history indicates that Article 52 of the Insurance Law (MVAIC) and section 3420(f) are complementary provisions which should be interpreted together. See *City of New York v. Collins*, 126 Misc. 2d 377, 379-80, 482 N.Y.S.2d 422, 424-25 (Sup. Ct. County 1984); 1958 N.Y. LEGIS. ANN., Bohlinger, *supra* note 2, at 244-45. The provisions were jointly enacted in 1958 to supplement the compulsory automobile insurance law. *Id.*; see *supra* note 3 and accompanying text (provisions designed to remove loopholes created by financially irresponsible motorists). Prior to 1965, all uninsured motorist claims were processed through MVAIC, see Ch. 759, §§ 2, 4, [1958] N.Y. Laws 1624 (McKinney), however, in 1965 the legislature transferred the responsibility to compensate insured victims to the insurance companies. See Ch. 322, §§ 2, 3, [1965] N.Y. Laws 1026 (McKinney). This amendment did not reduce the coverage of § 3420(f). See [1965] N.Y. LEGIS. ANN. 382. Rather the amend-

tion of this definition to section 3420(f) would effectively eliminate this unwarranted result and give the term "motor vehicle" a consistent definition for all uninsured motorist claims—whether filed with MVAIC or under section 3420(f).²⁹

The definition of "motor vehicle" as defined in section 5202(a) differs from the section 3420(e) definition in that the exclusion for police officers is not absolute. Police vehicles, as defined by section 5202(a), are excluded from the definition of "motor vehicle" only when the "injuries [are] caused by the negligent operation of a police vehicle."³⁰ Further support is found in Judge Alexander's admission that if Amato was uninsured, he could have filed a claim

ment gave the insurance companies "jurisdiction over claims arising out of the uninsured motorist coverage attached to automobile liability." *Id.* at 381. "Accordingly, there being no reason to distinguish the policy objectives of subdivision 2-a of section 167 [now section 3420(f)] from article 52, no statutory authorization exists for treating police vehicles differently under one provision than the other." *Collins*, 126 Misc. 2d at 380-81, 482 N.Y.S.2d at 425. In addition, several courts have applied the § 5202(a) definition to motor vehicles. *See, e.g., State Farm*, 129 App. Div. 2d at 223-25, 517 N.Y.S.2d at 730-31 (lower court applied § 5202(a) to § 3420(f)); *Tanner v. City of New York*, 67 App. Div. 2d 863, 863-64, 413 N.Y.S.2d 402, 403 (1st Dep't 1979) (same); *Collins*, 126 Misc. 2d at 379-80, 482 N.Y.S.2d at 424-25 (same).

²⁹ Under the holding in *State Farm*, the definition of "motor vehicle" for claims under § 3420(e) originates from § 3420(f), *State Farm*, 72 N.Y.2d at 294, 528 N.E.2d at 165, 532 N.Y.S.2d at 242, while claims under MVAIC derive their definition from section 5202(a), N.Y. INS. LAW §§ 5202-5225 (McKinney 1985). This survey suggests that such a holding creates an inconsistency in the definitions of "motor vehicle" in section 3420(f) and section 5202(a), and creates a discrepancy when applied to persons injured in their police vehicles because they would be excluded from receiving compensation under section 3420(f) but not under section 5202(a).

³⁰ 72 N.Y.2d at 294 n.2, 528 N.E.2d at 165 n.2, 532 N.Y.S.2d at 242 n.2, (emphasis in original). The *State Farm* court observed:

[A]lthough the uninsured occupant of a police vehicle may file a claim with the MVAIC for injuries sustained in an accident caused by an uninsured motor vehicle, police vehicles are exempted from the provisions of the MVAIC statute to the extent that otherwise eligible claimants are barred from filing a claim for injuries caused by the negligent operation of a police vehicle.

Id. (emphasis in original); *see, e.g., Matter of Downey*, 43 App. Div. 2d 168, 177, 350 N.Y.S.2d 821, 828 (4th Dep't 1973) (uninsured claimant who drove fire vehicle without permission of city/owner denied recovery under MVAIC). Prior courts have adjudged claims involving police vehicles on the basis of whether or not a police officer was a "qualified person" and did not deny recovery because a police vehicle was involved. *See, e.g., State Farm Mut. Auto Ins. Co. v. Hamra*, 42 App. Div. 2d 544, 545, 345 N.Y.S.2d 973, 973 (1st Dep't 1973) (status as "qualified person" dependent upon whether incident was "accidental"); *Fuscaldo v. MVAIC*, 24 App. Div. 2d 744, 745, 263 N.Y.S.2d 919, 921 (1st Dep't 1965) (same); *Kilbride v. MVAIC*, 62 Misc. 2d 641, 644, 309 N.Y.S.2d 257, 260 (Sup. Ct. N.Y. County 1970) (police officer not "qualified person" because victim of intentional vehicular assault).

with MVAIC.³¹ It is asserted that since Amato's injuries were not caused by the negligent operation of a police vehicle, New York City, as an unregulated self-insurer, was obligated to provide uninsured motorist coverage.

The Court of Appeals, in *State Farm*, created an exclusion in section 3420(f) for police vehicles which is incompatible with the purpose of the uninsured motorist provisions. It is therefore suggested that the application of the definition of "motor vehicle" in section 5202(a) of the Insurance Law to section 3420(f) provides the proper remedy for innocent victims

of accidents involving police vehicles. The proposed definition provides only a limited exemption for police vehicles which furthers the goals of uninsured motorist coverage and affords consistent protection to all victims of financially irresponsible motorists under both section 3420(f) of the Insurance Law and the MVAIC.

Paul S. Donohue

³¹ 72 N.Y.2d at 293 n.1, 528 N.E.2d at 164 n.1, 532 N.Y.S.2d at 241 n.1. "[B]oth Amato and Rutherford are beneficiaries of the uninsured motorist indorsement contained in their respective policies with State Farm . . . and are thus ineligible to file a claim with the MVAIC." *Id.*

