

Vehicle and Traffic Law § 388: Benefit of Taxicab Owner's Policy Does Not Inure to Passenger Who Was User Within Meaning of Statute But Who Was Excluded from Coverage by the Terms of the Policy

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VEHICLE AND TRAFFIC LAW

Vehicle & Traffic § 388: Benefit of taxicab owner's policy does not inure to passenger who was user within meaning of statute but who was excluded from coverage by the terms of the policy.

*Kernon v. Shamrock Casualty Co.*²⁴³ reaffirms the long standing rule permitting passenger carrier owners to limit their insurance coverage for liability to themselves and the operators of the vehicle. Section 388 imposes liability on the owner of a vehicle for negligence in the use or operation thereof and requires the owner's policy to provide indemnity against such liability.²⁴⁴ In *Kernon*, however, the policy issued by the defendant to the taxicab owner was in accordance with the limiting language of section 370,²⁴⁵ which only requires coverage for the operation and not the use of a passenger carrier.

The plaintiff, while a passenger in the taxicab, negligently opened the door into the path of another motorist. The latter sued passenger Kernon and she in turn lodged this third-party complaint against the insurer of the taxicab owner. The court had little difficulty establishing that Kernon was a user of the vehicle and thus within the statutory coverage of section 388.²⁴⁶ It follows that a valid suit in negligence could have been brought against the taxicab owner's insurer by the motorist.

The peculiarity of this case is that the motorist chose to sue only Kernon. Since the owner's policy covered him and the operators of the vehicle, the court concluded that Kernon, as a user of the taxicab, was an uninsured and had to defend the suit herself.²⁴⁷ The court rejected the contention that section 388 projected coverage for the user of the vehicle into the policy.²⁴⁸

Under a literal construction of section 370, the court's decision is correct. However, a liberal reading of that section to include a user of the vehicle as an operator would perhaps be more consistent with the policy of public protection which the statute seeks to engender. This is especially so in the present case where by mere matter of choice the burden falls on the party less able to afford it.

and gave no explanation for this failure. The court stated that the attorney's behavior might well be tortious and violative of the canons of professional ethics.

²⁴³ 68 Misc. 2d 29, 326 N.Y.S.2d 137 (N.Y.C. Civ. Ct. N.Y. County 1971).

²⁴⁴ N.Y. VEH. & TRAF. LAW § 388 (McKinney 1970).

²⁴⁵ *Id.* § 370(1)(b) (McKinney Supp. 1971).

²⁴⁶ 68 Misc. 2d at 30, 326 N.Y.S.2d at 138 (N.Y.C. Civ. Ct. N.Y. County 1971).

²⁴⁷ *Id.* at 31, 326 N.Y.S.2d at 139.

²⁴⁸ *Id.*, citing *General Accident Fire & Life Assurance Corp. v. Piazza*, 4 N.Y.2d 659, 152 N.E.2d 236, 176 N.Y.S.2d 976 (1958).