CARLOS GARCIA *v.* CITY OF BRIDGEPORT
(SC 18460)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.*

Argued November 28, 2011—officially released September 11, 2012

Jon Berk, with whom was *Robert P. Cohen*, for the appellant (plaintiff).

Betsy A. Edwards, with whom, on the brief, were *Arthur C. Laske III* and *Christopher Trueax*, legal intern, for the appellee (defendant).

Opinion

EVELEIGH, J. The plaintiff in this declaratory judgment action, Carlos Garcia, appeals from the judgment of the trial court rendered in favor of the defendant, the city of Bridgeport, determining the limits of the defendant's underinsured motorist coverage[1] in its capacity as a self-insurer to be the statutory minimum of $20,000 per person and $40,000 per occurrence on the basis of a purported request by the defendant pursuant to General Statutes § 38a-336 (a) (2)[2] for lesser coverage.[3] This case arises out of a motor vehicle accident caused by an underinsured motorist in which the plaintiff, an employee of the defendant, sustained injuries while operating a private passenger motor vehicle owned by the defendant while acting within the scope of his employment. The primary issue raised by the plaintiff in this appeal is whether a self-insured municipality, by virtue of its unlimited liability, is deemed to provide unlimited underinsured motorist coverage in the absence of a preaccident writing requesting lesser coverage limits in conformity with § 38a-336 (a) (2). We conclude that it does not and, accordingly, we affirm the judgment of the trial court.

The relevant facts and procedural history are undisputed. On February 2, 2004, the plaintiff was seriously injured in a motor vehicle accident caused by a third party while acting within the scope of his employment. The tortfeasor's commercial automobile liability insurer paid the plaintiff $20,000, which was the tortfeasor's per person liability coverage limit. The plaintiff's commercial automobile liability insurer paid the plaintiff an additional $30,000, which represented the plaintiff's per person underinsured motorist coverage limit of $50,000 less offset expressly provided for under the policy of any amount paid by the tortfeasor's insurer. The plaintiff sought coverage for his remaining damages from the defendant pursuant to its obligation to provide underinsured motorist coverage pursuant to § 38a-336 (a) (1).[4] The defendant, which had elected to self-insure pursuant to General Statutes §§ 38a-371 (c)[5] and 14-129,[6] denied the plaintiff's claim. The defendant cited a $20,000 per person limit to the underinsured motorist coverage under its self-insurance plan and an offset under that plan of any amount paid by a claimant's insurer and a tortfeasor's insurer. In this case, because the plaintiff's $50,000 recovery exceeded the coverage limit of the defendant's plan, the defendant contended that the plaintiff could not recover against it.

In response, the plaintiff initially brought an action seeking damages in Superior Court against the defendant to recover for his personal injuries sustained in the motor vehicle accident, claiming he was due underinsured motorist benefits. In support of his claim, the plaintiff contended that a self-insurer provides unlimited liability coverage and that, in the absence of an

insured's written request for a lesser coverage amount in accordance with § 38a-336 (a) (2), a "parity" clause in the underinsured motorist coverage statute requires coverage in the same amount as liability coverage. The plaintiff further contended that, since the defendant's self-insurance plan did not reflect any request for a lesser amount, coverage was not subject to any limit. The defendant filed a special defense, claiming that its self-insurance plan did include a request for a lesser amount of, specifically, the statutory minimums of $20,000 per person and $40,000 per occurrence. The plaintiff subsequently brought a declaratory judgment action against the defendant to determine the extent of its underinsured motorist coverage.

After these cases were consolidated, the defendant moved for summary judgment. The trial court rendered judgment in favor of the plaintiff on his declaratory judgment action only, concluding that the underinsured motorist coverage provided by the defendant's self-insurance plan was limited to $20,000 per insured and $40,000 per occurrence, but that such coverage was not offset by any payment to the plaintiff by other insurers. In reaching its conclusions on both of these issues, the trial court relied on *Piersa* v. *Phoenix Ins. Co.*, 273 Conn. 519, 526, 871 A.2d 992 (2005), which required preaccident documentation of permissive offsets to underinsured motorist coverage under a self-insurance plan. Applying its construction of *Piersa*, the trial court determined that the defendant had produced a document, created before the accident, requesting underinsured motorist coverage limits of $20,000 per insured and $40,000 per occurrence. The document, dated August 12, 1982, and labeled "Application for Self-Insurance Permit" (application), had been filed with the commissioner of insurance pursuant to General Statutes (Rev. to 1981) § 38-327 (c), the predecessor statute to § 38a-371 (c).[7] The trial court further found that no preaccident document established the election of any permissive offsets to the underinsured motorist coverage provided under the self-insurance plan, including the offset for any proceeds paid to the plaintiff by other insurers. Regarding the action for damages, the trial court denied the defendant's motion for summary judgment, concluding that, because the defendant could not offset its underinsured motorist liability by the proceeds paid to the plaintiff by other insurers, the trial court could not render summary judgment for the defendant. The plaintiff appealed from the judgment rendered in the declaratory judgment action to the Appellate Court, and we transferred the appeal to this court.[8]

On appeal, the plaintiff claims that the trial court improperly determined that the underinsured motorist coverage provided by the defendant's self-insurance plan was limited to the statutory minimum. The plaintiff challenges the trial court's determination that the defendant has "sufficiently shown that it has maintained

[underinsured] motorist coverage in the amount of $20,000/$40,000 since 1982."[9] In support of his claim, the plaintiff argues that, as a municipal self-insurer, the defendant provides unlimited motor vehicle liability coverage for the damages caused by its employees when operating its private passenger motor vehicles. Accordingly, because in the plaintiff's view, the defendant failed to document any request for lesser underinsured motorist coverage pursuant to § 38a-336 (a) (2) before the accident, it must provide unlimited underinsured motorist coverage. Further, the plaintiff maintains that the application relied on by the court to establish the defendant's request for lesser underinsured motorist coverage limits does not address the issue of coverage limits at all.[10] In response, the defendant contends that the trial court made a factual finding, entitled to deferential review under a clearly erroneous standard, that the application was a request for underinsured motorist coverage of the statutory minimum that remained effective through the date of the accident. The defendant further claims that, even in the absence of a request for lesser underinsured motorist coverage, a self-insurer provides only the statutory minimum underinsured motorist coverage.

Although we agree with the plaintiff that the application relied upon by the trial court cannot be construed as a request for lesser underinsured motorist coverage pursuant to § 38a-336 (a) (2), we agree with the defendant that, even in the absence of a request for lesser underinsured motorist coverage, a self-insurer's underinsured motorist coverage limits are those provided by General Statutes § 14-112. We conclude that it would be counterintuitive to require a self-insurer to make a request for lesser coverage pursuant to § 38a-336 (a) (2), because such treatment would be inconsistent with substantive differences between self-insurance and commercial insurance. Section 38a-336 (a) (2) is a notice statute requiring the insurer to obtain the informed consent of the insured, and a self-insurer is both the insurer and the insured, so a construction of this statute that requires an equivalent notice by a self-insurer and a corresponding request by a self-insured is untenable and unnecessary to protect the insured. A self-insurer under our motor vehicle insurance law is a party that has, inter alia, agreed to provide the statutory minimum underinsured motorist coverage. Therefore, we affirm the judgment of the trial court, albeit under different reasoning.

As an initial matter, we must resolve a dispute between the parties over the standard of our review of the trial court's determination that the application was a request for the lesser coverage of the minimum statutory coverage limits. The plaintiff contends that this determination was an exercise of statutory construction, and therefore is subject to plenary review. See *Kinsey* v. *Pacific Employers Ins. Co.*, 277 Conn. 398,

403–404, 891 A.2d 959 (2006) (determining whether trial court properly concluded that written request by plaintiff's employer for reduction in underinsured motorist coverage under its commercial fleet policy was ineffective because certain language in informed consent form in which request was made was not in twelve point type as required by statute). The defendant urges us to conclude that this determination was a "resolution of [a] factual [dispute] that underlie[s] [a] coverage issue" and that, accordingly, the trial court's conclusion is reviewable subject to the clearly erroneous standard. *National Grange Mutual Ins. Co.* v. *Santaniello*, 290 Conn. 81, 90, 961 A.2d 387 (2009). Because we conclude that this dispute centers on the legal meaning of a document, the application, in light of a statute, rather than a dispute over, for example, whether the document was actually filed with the commissioner of insurance, we agree with the plaintiff. Further, the primary issue in this case is the meaning of a statute in light of the defendant's status as a self-insurer. Accordingly, "[t]his case presents an issue of statutory construction, and, therefore, our review is plenary." *Kinsey* v. *Pacific Employers Ins. Co.*, supra, 404.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) Id., 405.

We begin our analysis of the judgment of the trial court, including the legal meaning of the application under the relevant statutes, by setting forth the legal principles that guide our resolution of this appeal. A municipal owner of a private passenger motor vehicle is obligated to provide insurance with respect to that vehicle in accordance with General Statutes § 38a-363 (d) (defining '[o]wner'), § 38a-363 (e) (defining '[p]rivate passenger motor vehicle'), and § 38a-371 (a) (requiring that owners of private passenger motor vehicle provide security in accordance with General Statutes §§ 38a-334 through 38a-343). *Piersa* v. *Phoenix Ins. Co.*, supra,

273 Conn. 523. That obligation required the defendant in the present case, as an employer, to provide underinsured motorist coverage for bodily injury or death on its private passenger motor vehicles for the benefit of its employees pursuant to § 38a-336 (f).[11] *Conzo* v. *Aetna Ins. Co.*, 243 Conn. 677, 683, 705 A.2d 1020 (1998). The minimum statutory coverage limits for underinsured motorist coverage are the same as the minimum statutory coverage limits provided for under § 14-112 for damages by reason of bodily injury or death, i.e., $20,000 per person and $40,000 per occurrence. General Statutes § 38a-336 (a) (1); see also *Piersa* v. *Phoenix Ins. Co.*, supra, 526. Although the minimum coverage obligation may be discharged by a commercial insurance policy; General Statutes § 38a-371 (b);[12] or through self-insurance; General Statutes § 38a-371 (c);[13] the funding mechanism for meeting that requirement is irrelevant to the vehicle owner's obligation to provide obligatory motor vehicle coverage, because "self-insurance is the functional equivalent of commercial insurance." *Hertz Corp.* v. *Federal Ins. Co.*, 245 Conn. 374, 378 n.4, 713 A.2d 820 (1998); see also General Statutes § 38a-363 (b) (terms '[i]nsurer' and 'insurance company' in motor vehicle insurance statutes include self-insurer).[14] Pursuant to Public Acts 1983, No. 83-461, effective July 1, 1984, each automobile liability insurance policy provides, by operation of law, parity between underinsured motorist coverage and the amount of liability coverage purchased unless the insured requests in writing, after such act was enacted on July 5, 1983, a lesser amount of coverage from the insurer, but not less than the minimum coverage limits provided for under § 14-112. *Travelers Indemnity Co.* v. *Malec*, 215 Conn. 399, 403–405, 576 A.2d 485 (1990); see also General Statutes § 38a-336 (a) (2).

Subsequently, in *Nationwide Mutual Ins. Co.* v. *Pasion*, 219 Conn. 764, 771, 594 A.2d 468 (1991), this court determined that, as the legislature intended that the decision to reduce underinsured motorist coverage by consumers be an informed one, all named insureds must request such lesser amount. This court however, has determined that § 38a-336 (a) (2) should not be inflexibly applied outside the individual insurance policy context. For example, this court refused to apply the rule we first articulated in *Pasion* to fleet insurance, because "we are not persuaded that requiring [the owner of the vehicle] to provide a written request for a reduction in uninsured motorist coverage under the [commercial fleet insurance] policy would further the legislative goal of ensuring that consumers are informed of the relative cost of this type of insurance. . . . [W]e do not believe that a company that . . . is covered under a commercial fleet policy, falls within the class of consumers that the legislature sought to protect in requiring the signature of all named insureds . . . .

"[T]he primary legislative purpose in requiring a writ-

ten request for a reduction in [underinsured] motorist coverage is to ensure that one named insured not be bound, to his or her detriment, by the unilateral decision of another named insured to seek such a reduction. . . . Such a concern has little or no applicability in the context of a commercial fleet policy." (Citation omitted.) *Frantz* v. *United States Fleet Leasing, Inc.*, 245 Conn. 727, 739, 714 A.2d 1222 (1998).

Since *Malec*, our courts have been called upon to apply our underinsured motorist coverage law to self-insurers "because the word 'policy' is specifically defined by statute in a way that it does not comfortably fit within a scheme of self-insurance." *Piersa* v. *Phoenix Ins. Co.*, supra, 273 Conn. 526. A self-insured entity such as the defendant, like a commercial fleet insurance policyholder, is not in that class of consumers that the legislature sought to protect through § 38a-336 (a) (2), because such protection would be from itself in its capacity as insurer and because such a requirement would not serve the legislative goal of ensuring that consumers are informed of the relative cost of underinsured motorist insurance. The Appellate Court, in considering the meaning of § 38a-336 (a) (2), has determined that a municipal self-insurer is not required to request lesser underinsured motorist coverage limits because that "would have required the [self-insured] city, wearing its hat as insured, to file a written request with itself, wearing its hat as insurer," a requirement that the Appellate Court considered to be "untenable." *Boynton* v. *New Haven*, 63 Conn. App. 815, 828, 779 A.2d 186, cert. denied, 258 Conn. 905, 782 A.2d 136 (2001). In *Piersa* v. *Phoenix Ins. Co.*, supra, 538–39, this court refused to extend *Boynton* to § 38a-334-6 (d) (1) (B) of the Regulations of Connecticut State Agencies (regulations), pursuant to which a "policy may provide for the reduction of limits to the extent that damages have been . . . paid or are payable under any workers' compensation law . . . ." In considering the reasoning of *Boynton* in this specific context, this court stated, "[w]e do not disagree with the Appellate Court that applying [§ 38a-336 (a) (2)] literally in the self-insurance context would be counterintuitive, because that provision is a notice provision requiring informed consent by the insured. Section 38a-334-6 of the regulations, however, is not such a notice provision; it is a provision that specifies the basic requirement of how an insurer—self or commercial—may limit its liability. It is neither untenable nor counterintuitive to require a self-insurer to file a written document to accomplish that purpose so as to achieve a rough equivalence to a commercial insurer." *Piersa* v. *Phoenix Ins. Co.*, supra, 539. Accordingly, the trial court's reliance on *Piersa* for the proposition that § 38a-336 (a) (2), a statutory notice provision requiring an insurer to obtain the informed consent of the insured, requires a self-insurer to file a written document in order to avoid unlimited underinsured

motorist coverage, is misplaced. Rather, this dispute presents the same issue addressed by the Appellate Court in *Boynton*, a question of first impression for this court.

In order to determine whether the Appellate Court properly concluded in *Boynton* that § 38a-336 (a) (2) cannot be applied in the self-insurance context, it is helpful to examine the respective scope and meaning of self-insurance and insurance under our law. For purposes of title 38a, entitled "[i]nsurance," the terms defined therein "unless it appears from the context to the contrary, shall have a scope and meaning as set forth in [the definitional] section." General Statutes § 38a-1. 'Policy' means "any document, including attached endorsements and riders, purporting to be an enforceable contract, which memorializes in writing some or all of the terms of an insurance contract." General Statutes § 38a-1 (15). "This definition invokes the traditionally understood insurance policy, with the characteristics of an enforceable written contract between insurer and insured, memorializing the terms of that contract. That definition does not fit comfortably within a self-insurance context because in such a context the insurer and insured are one and the same, and there is no enforceable contract between them." *Piersa* v. *Phoenix Ins. Co.*, supra, 273 Conn. 527.

'Insurance' is defined as "any agreement to pay a sum of money, provide services or any other thing of value on the happening of a particular event or contingency or to provide indemnity for loss in respect to a specified subject by specified perils in return for a consideration. In any contract of insurance, an insured shall have an interest which is subject to a risk of loss through destruction or impairment of that interest, which risk is assumed by the insurer and such assumption shall be part of a general scheme to distribute losses among a large group of persons bearing similar risks in return for a ratable contribution or other consideration." General Statutes § 38a-1 (10). Thus, our statutes define insurance as the assumption of another's risk for profit. *Doucette* v. *Pomes*, 247 Conn. 442, 456, 724 A.2d 481 (1999). A municipality that self-insures its private passenger motor vehicle fleet retains its own risk; it does not assume the risk of another, for consideration or otherwise. A self-insurer fulfills its obligations under the motor vehicle insurance law without purchasing insurance. See id., 456–57.

Section 38a-1 (11) defines an '[i]nsurer' as including "any person or combination of persons doing any kind or form of insurance business . . . ." That a self-insuring municipality has chosen to retain its own risk rather than purchase insurance does not transform its business to that of insurance. *Doucette* v. *Pomes*, supra, 247 Conn. 457. Additionally, § 38a-1 (11) goes on to define '[a]lien insurer,' '[d]omestic insurer,' '[f]oreign insurer,'

'[m]utual insurer' and '[u]nauthorized insurer,' but provides no definition of self-insurer. In the absence of a clear indication of legislative intent to the contrary, an issue we discuss later, a self-insurer is not deemed to be an insurer. *Esposito* v. *Simkins Industries, Inc.*, 286 Conn. 319, 332–33, 943 A.2d 456 (2008).

"Additionally, we recognize the substantial authority for the position that self-insurance is not insurance at all . . . ([a] certificate of self-insurance can in nowise be equated with an insurance contract or policy). Scholars have discussed self-insurance as follows: Risk transference or risk distribution may be accomplished without using insurance. . . . For example, entities that provide goods or services to many individuals . . . could choose to handle the risk of personal injury claims by setting aside assets—either by accounting entries or by actually establishing a special fund—from which it will pay such claims, *rather than by purchasing insurance*. . . . Although an entity that handles the risk of tort claims in this manner is sometimes referred to as a self-insurer, this approach involves no insurance as the term is ordinarily used in regulatory statutes or in other legal contexts. . . . Self-insurance as a technique for treating risk has long been surrounded with confusion and controversy. . . . For those who believe that transfer of risk is a requisite for insurance, the term self-insurance is a misnomer since it permits no transfer." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Doucette* v. *Pomes*, supra, 247 Conn. 458.

The language of § 14-129 supports this view of self-insurance. Section 14-129 provides in relevant part: "(a) Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer . . . (b) . . . when [the commissioner] is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person. . . ." Thus, a self-insurer retains its own liability to satisfy all judgments against it, while an insurer is defined by its acceptance of the risk to pay judgments against its insured, within specified limits, in exchange for a premium.

Likewise, our mandatory security requirements, generally met by motor vehicle owners with commercial insurance under § 38a-371 (b), recognize the dual role of a self-insurer as insured and insurer. Section 38a-371 (c) provides: "Subject to approval of the Insurance Commissioner the security *required by this section*, may be provided by self-insurance by filing with the commissioner in satisfactory form: (1) A continuing undertaking by the owner or other appropriate person to perform *all obligations imposed by this section*; (2) evidence that appropriate provision exists for the prompt and efficient administration of all claims, benefits, and obligations *provided by this section*; and (3)

evidence that reliable financial arrangements, deposits or commitments exist providing assurance for payment of *all obligations imposed by this section substantially equivalent to those afforded by a policy of insurance that would comply with this section*. A person who provides security *under this subsection* is a self-insurer. A municipality may provide the security *required under this section* by filing with the commissioner a notice that it is a self-insurer." (Emphasis added.)

Therefore, for the owner of at least twenty-five private passenger motor vehicles, under § 38a-371 (c), self-insurance is a commitment to perform the minimum obligations that a commercial insurer would otherwise perform and, under § 14-129, self-insurance is a commitment to satisfy all judgments against it. Neither statute suggests a transfer of the risk of loss for payment of a premium. It follows that, because under § 14-129 a self-insurer's duty to pay judgments against it is unlimited, that as to the rights of a claimant any self-insurer's declared coverage limits for liability imposed by law are wholly nugatory. Conversely, mandatory underinsured motorist coverage is not for a judgment against the self-insured, but for a judgment against a third party tortfeasor with insufficient commercial insurance coverage to pay for all the injured party's damages. Therefore, self-insurance of the underinsured motorist coverage requirement is the commitment to perform, pursuant to § 38a-371 (c), the "obligations imposed by this section," i.e., the underinsured coverage obligations specified in § 38a-336 (a) (1). As this court has observed, "§ 14-129 was part of the legislative effort to impose minimum liability coverage. Nothing in its history suggests that it was ever intended to trump the subsequently enacted, and more specific, provision regarding uninsured and underinsured motorist coverage [under § 38a-336]." *Willoughby* v. *New Haven*, 254 Conn. 404, 434, 757 A.2d 1083 (2002). Section 38a-336 (a) (1) references the minimum liability coverage limits specified in § 14-112—currently $20,000 per person and $40,000 per occurrence—and any other obligations imposed by § 38a-336. Accordingly, we look to the remainder of § 38a-336 for any obligation imposed upon a self-insurer to provide more underinsured motorist coverage. Ultimately, we reject the plaintiff's arguments that, in the absence of a request for lesser coverage under § 38a-336 (a) (2), parity in the limits of liability and uninsured/underinsured motorist coverage is required for self-insurers. Although this court's discussion in *Piersa* suggests concern with the Appellate Court's holding in *Boynton* in that this court was not persuaded to extend its reasoning to the regulation at issue in *Piersa*, we now conclude that the legislative intent of "absolute parity between liability coverage limits and [underinsured motorist] coverage" discerned in *Travelers Indemnity Co.* v. *Malec*, supra, 215 Conn. 405, simply does not apply in the self-insurance context.[15]

Section 38a-363 (b) expressly provides that self-insurers shall be treated as insurers for purposes of our motor vehicle insurance laws.[16] Because of the difficulty of doing so in light of the differing substantive natures of insurers and self-insurers, we have been called upon to construe the meaning of certain of our motor vehicle insurance laws in the context of self-insurers. In *Conzo* v. *Aetna Ins. Co.*, supra, 243 Conn. 677, as in the present matter, the city, as the self-insured employer, had conceded its insurance obligations in light of General Statutes §§ 38a-370 and 38a-371, and recognized, as we stated in *Bouley* v. *Norwich*, 222 Conn. 744, 747 n.6, 610 A.2d 1245 (1992), that the insurance mandates of General Statutes §§ 38a-334 through 38a-336a apply to self-insurers. In concluding that the funding mechanism—i.e., commercial insurance or self-insurance—by which an owner of private passenger motor vehicles decides to meet the requirements of our motor vehicle insurance scheme is irrelevant to the obligation of that funding entity to comply with such requirements, we recognized that "§ 38a-336 (f) must be construed to achieve a uniform treatment of employee victims of accidents involving inadequately insured vehicles," i.e., recognizing that although self-insurers are not insurers, that from the perspective of the *claimant*, self-insurance is the functional equivalent of commercial insurance. *Conzo* v. *Aetna Ins. Co.*, supra, 686.

In *Hertz Corp.* v. *Federal Ins. Co.*, supra, 245 Conn. 379 n.4, we elaborated on this theme, taking further "note of . . . § 38a-363 (b) ('self-insurer' within definition of insurer) and § 38a-371 (c) (3) (self-insurer to provide payments for all liabilities covered by residual liability insurance and all other obligations imposed by said sections 'substantially equivalent to those afforded by a policy of insurance that would comply with this section'). These statutory provisions explicitly reflect the legislature's intent to create a uniform scheme of insurance protection notwithstanding the source of that protection. That is, irrespective of whether the protection is provided by a program of commercial insurance or self-insurance, within the context of the mandatory insurance schemes, we can discern no distinction based upon the means of funding those benefits." Accordingly, the focus of substantial equivalence is on the satisfaction of the claims of injured parties notwithstanding substantive and unavoidable differences between self-insurance and commercial insurance.

Although we have applied § 38a-363 (b) for purposes of affirming a self-insurer's obligation to provide coverage on its private passenger motor vehicles for the benefit of third party claimants, this court has determined that other requirements for insurers, if literally and inflexibly applied to self-insurers, would lead to absurd and unworkable results. For example, *Piersa* v. *Phoenix Ins. Co.*, supra, 273 Conn. 519, involved a dis-

pute over the underinsured motorist coverage provided by a municipal self-insurer. As we previously have noted, at issue in *Piersa* was a regulation that requires an insurer that wished to impose permitted offsets to underinsured motorist coverage to describe such offsets in the insurance policy. Id., 527. Specifically, in *Piersa*, the municipal self-insurer claimed that the permissive offset for workers' compensation proceeds, permitted by § 38a-334-6 (d) (1) (B) of the Regulations of Connecticut State Agencies, was implied under its minimum limit self-insurance plan[17] even though the regulation requires that an insurer include such offsets in the insurance policy. Because a self-insurer is its own insured, it can have no contract with itself—no written insurance policy—so literal construction of the regulation would foreclose a self-insurer's ability to limit coverage through permissive offsets as might a commercial insurer. In construing § 38a-334-6 (d) (1) of the regulations in the context of a self-insurer, we concluded that, for a self-insurer, a preaccident writing was functionally equivalent to the policy language requirement for a commercial insurer. Accordingly, we concluded that such a writing electing permissive offsets was necessary so as to effectuate parity, as nearly as possible, between self-insurers and commercial insurers. Id., 527–28, 531. In doing so, however, we discerned a meaningful difference between the notice function of the parity statute at issue in *Boynton* and in the present case, § 38a-336 (a) (2), and the substantive function of the permissive offset regulation at issue in *Piersa*, a "provision that specified the basic requirement of how an insurer—self or commercial—may limit its liability." Id., 539. Despite the apparent inconsistency in requiring a self-insurer to elect permissive offsets but not statutory coverage limits, and despite this court's rejection in *Malec* of the characterization of the court in *Boynton* of our analysis of the legislative history of § 38a-336 in *Malec*, this court in *Piersa* ultimately left undisturbed the holding in *Boynton* that it would be counterintuitive to apply the underinsured motorist statute to self-insurers by requiring a request for lesser underinsured motorist coverage limits.[18] Id., 537–39.

This court has subsequently concluded that where a regulation permits an insurer to allocate its statutory primary responsibility through an insurance policy clause, the functional equivalency of a self-insurer requires that a preoccurrence writing serves the same function. In *Farmers Texas County Mutual* v. *Hertz Corp.*, 282 Conn. 535, 537, 923 A.2d 673 (2007), a self-insuring motor vehicle rental business had agreed with a customer that, despite its responsibility to meet the § 38a-371 mandatory security requirements of its private passenger motor vehicle rented by the customer, its coverage would be secondary to any other available insurance. After the customer was found at fault in an ensuing accident, the customer's personal automobile

insurer contested the enforceability of the agreement, contending that under our statutory scheme, the motor vehicle's owner has primary insurance obligations. Id., 540–41. This court had previously held, in *Aetna Casualty & Surety Co.* v. *CNA Ins. Co.*, 221 Conn. 779, 785–87, 606 A.2d 990 (1992), that commercial insurers may allocate primary responsibility for coverage through the use of "other insurance" clauses under § 38a-334-5 (g) of the Regulations of Connecticut State Agencies. In *Farmers Texas County Mutual* v. *Hertz Corp.*, supra, 548, this court held that because self-insurers are treated as the equivalent of commercial insurers under our motor vehicle insurance law, a self-insurer could contract with its customers to establish a priority order of responsibility among other insurers. In doing so, this court noted that "§ 38a-371 (c) (3) requires a self-insurer to provide payment for all liabilities covered by residual liability insurance as well as other obligations imposed by that section substantially equivalent to those afforded by a policy of insurance that would comply with this section. . . . This court has recognized that, [t]hese statutory provisions explicitly reflect the legislature's intent to create a uniform scheme of insurance protection notwithstanding the source of that protection. That is, irrespective of whether the protection is provided by a program of commercial insurance or self-insurance, *within the context of the mandatory insurance schemes*, we can discern no distinction based upon the means of funding *those benefits*." (Citation omitted; emphasis added; internal quotation marks omitted.) Id. "[I]t is clear that the essential concern of our motor vehicle liability insurance scheme is *guaranteeing minimum coverage* for personal injury and property damage resulting from automobile accidents . . . ." (Emphasis added.) Id., 548–49. Accordingly, as this court had previously held in *Piersa*, we found that the reference in a regulation to a coverage limitation option a commercial insurer could exercise through language in its policy form could be exercised by a self-insurer through a preoccurrence writing, such as the car rental agreement. Id., 552.

Our review of the relevant statutes and case law reveals that the instruction in § 38a-363 (b) to treat a self-insurer as an insurer is intended to ensure that both self-insurers and commercial insurers have equivalent opportunities to limit coverage and that claimants are not disadvantaged when looking to a self-insurer, rather than commercial insurer, for satisfaction of claims. Nevertheless, where there are substantive differences between an insurer and self-insurer, as in the relationship between the insurer and the insured, certain requirements may be untenable. We have also recognized that guaranteeing minimum coverage is the essential and fundamental concern of our motor vehicle liability insurance scheme. With this legal landscape in mind, there are several questions we must answer. First,

did the trial court properly conclude that the defendant had requested the minimum statutory underinsured motorist coverage limits by the functional equivalent of a written request for a lesser amount? Second, if not, what underinsured motorist coverage is provided by a municipal self-insurer that has not made any election? We address each question in turn.

It is undisputed that the defendant, in the application dated August 12, 1982, provided the commissioner of insurance with the security then required of an owner of a private passenger motor vehicle by demonstrating qualification to self-insure pursuant to General Statutes (Rev. to 1981) § 38-327 (c), now § 38a-371 (c). It is also undisputed that the application did not include any questions regarding higher limits for liability or underinsured motorist coverage, nor any obvious opportunity to describe how the self-insurer would satisfy any claim for such higher limits. The defendant claims that the application constituted an election of minimum liability coverage limits and, hence, pursuant to § 38a-336 (a) (2), an election of underinsured motorist coverage limits equal to the amount for which it provided proof of financial responsibility, i.e., the minimum statutory coverage limits. The plaintiff contends that a self-insurer provides unlimited liability coverage, and that pursuant to § 38a-336 (a) (2), in the absence of an election of underinsured motorist coverage limits, those limits equals the liability coverage limits. The trial court agreed with the defendant.

We need not determine if the application constitutes an election of underinsured coverage limits, because the defendant's claim is controlled by our decision in *Malec*. At the time the application was made, § 38a-336 (a) (2)[19] had not yet been enacted. Public Acts 1983, No. 83-461, amended General Statutes (Rev. to 1981) § 38-157c (2), now § 38a-336 (a), on July 5, 1983, by, inter alia, adding subdivision (2), requiring underinsured motorist coverage limits to be the same as "those purchased to protect against loss resulting from the liability imposed by law" unless a different amount was requested in writing by the insured, on every policy issued or renewed on and after July 1, 1984. In *Travelers Indemnity Co.* v. *Malec*, supra, 215 Conn. 403–405, we determined that any election of underinsured motorist coverage limits prior to the enactment of Public Act 83-461 could not limit the amount of coverage as required by § 38a-336 (a) (2) on every policy issued or renewed on and after July 1, 1984. Accordingly, by virtue of its date alone, the application could not be a request for lesser underinsured motorist coverage limits pursuant to the proviso contained within § 38a-336 (a) (2). Therefore, the trial court should not have relied upon the application as a source of information for the defendant's underinsured motorist coverage limits, and we must therefore reject the defendant's claim and the trial court's reasoning to the contrary.

Next, we must determine what underinsured motorist coverage was provided by the defendant's self-insurance plan as of the date of the accident. The parties agree that, at the time of the accident, the defendant was a self-insurer, that is, the defendant was in compliance with § 38a-371 (c), which permitted a municipality to elect to satisfy its private passenger motor vehicle insurance obligations through self-insurance upon the filing of a notice with the commissioner of insurance that it self-insures, by virtue of a letter dated April 20, 1990, from the defendant's attorney to the commissioner of insurance. At the time of the accident, as a municipality, the defendant was not required to comply with filing requirements applicable to other persons with more than twenty-five motor vehicles then seeking to self-insure. See General Statutes § 38a-371 (c).

A critical substantive difference between commercial insurance and self-insurance is that the exhaustion of liability coverage limits in commercial insurance, but not self-insurance, is the triggering mechanism for a claim for underinsured motorist benefits. General Statutes § 38a-336 (b).[20] When the liable party is a self-insurer, the claimant's own underinsured motorist coverage under his commercial insurance is excluded. Regs., Conn. State Agencies § 38a-334-6 (c) (1) (B).[21] In such a circumstance, the insured's underinsured motorist coverage is unnecessary, because a self-insurer is presumed to have the ability to pay, and indeed, under § 14-129, the obligation to pay in full any judgment against it within thirty days.[22]

The underinsured motorist coverage statute provides that each automobile liability insurance policy shall provide underinsured motorist coverage with limits not less than those specified in § 14-112 (a). It is uncontested that this requirement applies to self-insurance. *Hertz Corp.* v. *Federal Ins. Co.*, supra, 245 Conn. 378 n.4. A commercial insurer must offer an insured the option to purchase underinsured motorist coverage with "limits that are twice the limits of the bodily injury coverage of the policy issued . . . ." General Statutes § 38a-336 (a) (1). Because a self-insurer does not purchase insurance, and because a self-insurer's liability for bodily injury claims is unlimited; see General Statutes § 14-129 (b); there is no way to apply § 38a-336 (a) (1) to self-insurers. Under § 38a-336 (a) (2), "each automobile liability insurance policy issued or renewed on and after January 1, 1994, shall provide uninsured and underinsured motorist coverage with limits for bodily injury and death *equal to those purchased to protect against loss resulting from the liability imposed by law* unless any named insured requests in writing a lesser amount, but not less than the limits specified in subsection (a) of section 14-112." (Emphasis added.) It is fundamental that self-insurers need not purchase *any* coverage to protect against loss resulting

from the liability imposed by law. Instead of agreeing to purchase coverage from a commercial insurer, a self-insurer agrees under § 38a-371 (c) to perform all obligations required under the law, including to provide underinsured motorist coverage to occupants of its motor vehicles at minimum limits pursuant to § 14-112 (a), subject to optional offsets specified in § 38a-334-6 (d) (1) of the Regulations of Connecticut State Agencies. Further, we have already agreed with the Appellate Court that "applying [§ 38a-336 (a) (2)] literally in the self-insurance context would be counterintuitive, because that provision is a notice provision requiring informed consent by the insured." *Piersa* v. *Phoenix Ins. Co.*, supra, 273 Conn. 539.[23] Because the option to request lesser coverage limits is subject to the same minimum under § 14-112 (a), we conclude that, under § 38a-336 (a) (2), a self-insurer provides underinsured motorist coverage of the limits specified in § 14-112 (a).

Section 38a-334 (b) provides that "[n]othing . . . shall prohibit any insurer from affording broader coverage under a policy of automobile liability insurance than that required by [insurance] regulations." We recognize, as we stated in *Willoughby* v. *New Haven*, supra, 254 Conn. 437 n.27, that it follows that there is no bar on a self-insurer from providing broader coverage than the minimum required by law. Because a claimant looks to a legally culpable self-insurer for satisfaction of its entire claim for damages, however, a self-insurer necessarily provides broader coverage than the minimum required by law in the liability coverage context.[24] Therefore, although from the claimant's perspective a self-insurer is the functional equivalent of an insurer in that it pays claims, it is inescapable that self-insurance is not insurance, and the arrangement is substantively different.

The plaintiff contends that a self-insurer could limit its liability, and because the defendant did not do so, § 38a-336 (a) (2) demands equivalently unlimited underinsured motorist coverage. Yet, the plaintiff cites, with approval, a definition of self-insurance from a learned treatise, concluding that a self-insurer's exposure is limited only by the entity's ability to pay the judgment against it.[25] As explained previously in this opinion, a self-insurer cannot limit its liability and does not "maintain coverage" for its liability at all and, therefore, contrary to the plaintiff's claims, need not "articulate the liability protection it is providing for the motoring public in Connecticut." Instead, it agrees to pay judgments against it and perform all obligations that it would otherwise be required, under our motor vehicle laws, to commercially insure. In the context of underinsured motorist coverage, a self-insurer has accepted, pursuant to § 38a-371 (c), the obligation to provide coverage of the minimum limits specified in § 14-112 (a). We find no reason to presume even greater coverage for occupants of a self-insurer's private passenger motor vehi-

cles as a matter of law. Although it is true that a self-insured employer or municipality may wish to provide greater protection to its employees and other occupants of its private passenger motor vehicles (and, as we explained in *Willoughby*, occupants of motor vehicles that are not within the definition of a private passenger motor vehicle) who are injured by underinsured motorists, that is an obligation not imposed by our motor vehicle insurance scheme, and therefore not an obligation this court may impose. See General Statutes § 38a-371 (c). We have consistently noted that "the essential concern of our motor vehicle liability insurance scheme is guaranteeing minimum coverage for personal injury and property damage resulting from automobile accidents . . . ." *Farmers Texas County Mutual* v. *Hertz Corp.*, supra, 282 Conn. 548–49. Accordingly, where greater underinsured motorist protection is presumed by our scheme if an insurer fails to obtain the informed consent of an insured, application of this aspect of our scheme to a self-insurer, who fills both these roles, would be counterintuitive. *Piersa* v. *Phoenix Ins. Co.*, supra, 273 Conn. 538.

As we have previously noted, in the context of self-insurance there is no balancing of cost of coverage versus protection of claimants, because there is no commercial insurer, and consequently no risk transfer and pooling, no premium payments and no limits to liability. Id., 529–30. Commercially insured parties do balance premium costs against the protection of insurance, but self-insured parties, by definition, lack the protection of insurance. Self-insurers have a direct trade-off between cost and claims paid.[26] Therefore, even though a self-insurer is free to compensate occupants of its motor vehicles for their damages caused by underinsured motorists, and we can conceive of valid reasons for one to do so, we now conclude that there is no reason for the law to attribute to a self-insurer a presumption that a notice statute implies a commitment to satisfy unlimited underinsured motorist claims. In so concluding, we leave undisturbed our conclusion in *Piersa* that, to take advantage of permissible offsets provided by § 38a-334-6 (d) of the Regulations of Connecticut State Agencies, a self-insurer must maintain a written document, either in its files or with the commissioner of insurance. We, however, expressly limit *Piersa* to this conclusion. *Piersa* considered a different insurance regulation than the statutory scheme interpreted by *Boynton* and that we interpret herein. Therefore, reliance upon our analysis of the regulation in *Piersa* for repudiation of the core holding of the Appellate Court in *Boynton* is misplaced.[27]

In conclusion, we hold that, pursuant to the statutory insurance scheme, the substantive difference between insurance and self-insurance compels us to conclude that a self-insurer is deemed to provide the minimum statutory underinsured motorist coverage of $20,000

per accident and $40,000 per occurrence for the benefit of occupants of its private passenger motor vehicles. A self-insurer need not prove the existence of a document requesting the minimum statutory coverage limits.

The judgment is affirmed.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] We refer to "underinsured" motorist coverage without intending a distinction between such coverage and "uninsured" motorist coverage. *Boynton* v. *New Haven*, 63 Conn. App. 815, 816 n.2, 779 A.2d 186, cert. denied, 258 Conn. 905, 782 A.2d 136 (2001).

[2] General Statutes § 38a-336 (a) (2) provides in relevant part: "Notwithstanding any provision of this section to the contrary, each automobile liability insurance policy issued or renewed on and after January 1, 1994, shall provide uninsured and underinsured motorist coverage with limits for bodily injury and death equal to those purchased to protect against loss resulting from the liability imposed by law unless any named insured requests in writing a lesser amount, but not less than the limits specified in subsection (a) of section 14-112. Such written request shall apply to all subsequent renewals of coverage and to all policies or endorsements that extend, change, supersede or replace an existing policy issued to the named insured, unless changed in writing by any named insured. No such written request for a lesser amount shall be effective unless any named insured has signed an informed consent form . . . ."

Although § 38a-336 was the subject of technical amendments in 2010; see Public Acts 2010, No. 10-5, § 9; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[3] The plaintiff appealed from the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. Following the parties' appearance, we ordered supplemental briefing on the determination of a self-insured's underinsured motorist coverage limit in the absence of a request for lesser coverage pursuant to § 38a-336 (a) (2). The question that the parties briefed reads as follows: "In the absence of a self-insurer's election of uninsured and underinsured motorist coverage limit under § 38a-336 (a) (2), is coverage either: (1) unlimited, or (2) the statutory minimum under General Statutes § 14-112? In answering this question, address whether this court's holding in *Piersa* v. *Phoenix Ins. Co.*, 273 Conn. 519, 871 A.2d 992 (2005) (requiring self-insurer to document election of uninsured and underinsured motorist coverage offset under § 38a-334-06 [d] [1] [B] of the Regulations of Connecticut State Agencies) reversed, in whole or in part, the Appellate Court's holding in *Boynton* v. *New Haven*, 63 Conn. App. 815, 779 A.2d 186 [holding § 38a-336 (a) (2) notice requirement inapplicable to self-insurer and coverage limit determined per § 14-112], cert. denied, 258 Conn. 905, 782 A.2d 136 (2001) . . . ."

[4] General Statutes § 38a-336 (a) (1) provides: "Each automobile liability insurance policy shall provide insurance, herein called uninsured and underinsured motorist coverage, in accordance with the regulations adopted pursuant to section 38a-334, with limits for bodily injury or death not less than those specified in subsection (a) of section 14-112, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and underinsured motor vehicles and insured motor vehicles, the insurer of which becomes insolvent prior to payment of such damages, because of bodily injury, including death resulting therefrom. Each insurer licensed to write automobile liability insurance in this state shall provide uninsured and underinsured motorists coverage with limits request by any named insured upon payment of the appropriate premium, provided each such insurer shall offer such coverage with limits that are twice the limits of the bodily injury coverage of the policy issued to the named insured. The insured's selection of uninsured and underinsured motorist coverage shall apply to all subsequent renewals of coverage and to all policies or endorsements which extend, change, supersede or replace an existing policy issued to the named insured, unless changed in writing by any named insured. No insurer shall be required to provide uninsured and underinsured motorist coverage to (A) a named insured or relatives residing in his household when occupying, or struck as

a pedestrian by, an uninsured or underinsured motor vehicle or a motorcycle that is owned by the named insured, or (B) any insured occupying an uninsured or underinsured motor vehicle or motorcycle that is owned by such insured."

[5] General Statutes § 38a-371 (c) provides: "Subject to approval of the Insurance Commissioner the security required by this section, may be provided by self-insurance by filing with the commissioner in satisfactory form: (1) A continuing undertaking by the owner or other appropriate person to perform all obligations imposed by this section; (2) evidence that appropriate provision exists for the prompt and efficient administration of all claims, benefits, and obligations provided by this section; and (3) evidence that reliable financial arrangements, deposits or commitments exist providing assurance for payment of all obligations imposed by this section substantially equivalent to those afforded by a policy of insurance that would comply with this section. A person who provides security under this subsection is a self-insurer. A municipality may provide the security required under this section by filing with the commissioner a notice that it is a self-insurer."

[6] General Statutes § 14-129 provides: "(a) Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the commissioner as provided in subsection (b) of this section.

"(b) The commissioner may, in his discretion, upon the application of such person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

"(c) Upon not less than five days' notice and a hearing pursuant to such notice, the commissioner may, upon reasonable grounds, cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment has become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance."

[7] General Statutes (Rev. to 1981) § 38-327 (c), now § 38a-371 (c), provides: "Subject to approval of the insurance commissioner the security required by this chapter may be provided by self-insurance by filing with the commissioner in satisfactory form: (1) A continuing undertaking by the owner or other appropriate person to pay basic reparations benefits and the liabilities covered by residual liability insurance and to perform all other obligations imposed by this chapter; (2) evidence that appropriate provision exists for the prompt and efficient administration of all claims, benefits, and obligations provided by this chapter; and (3) evidence that reliable financial arrangements, deposits or commitments exist providing assurance for payment of basic reparations benefits and the liabilities covered by residual liability insurance and all other obligations imposed by this chapter substantially equivalent to those afforded by a policy of insurance that would comply with this chapter. A person who provides security under this subsection is a self-insurer." Effective October 1, 1982, "Public Acts, 1982, No. 82-145, amended General Statutes (Rev. to 1981) § 38-327 (c), now § 38a-371 (c), "to permit municipalities that self-insure to file a notice with the insurance commissioner that they self-insure, instead of being required to comply with the more complicated filing requirements otherwise mandated by subsection (c) of § 38a-371." *Willoughby* v. *New Haven*, 254 Conn. 404, 435, 757 A.2d 1083 (2000).

[8] The plaintiff appealed from the decision on the damages action as well, but later withdrew that appeal.

[9] On December 8, 2006, well after the date of the motor vehicle accident and the plaintiff's injuries, the defendant notified the commissioner of insurance of its affirmative election of minimum underinsured motorist statutory coverage limits and various exclusions, limitations and reductions to such coverage permitted by regulation. It is suggested by the plaintiff, and uncontroverted by the defendant, that this notification was prompted by our holding in *Piersa* v. *Phoenix Ins. Co.*, supra, 273 Conn. 527, which concluded that a municipal self-insurer must document its election of permissive offsets to underinsured motorist coverage provided for by regulation.

[10] Paragraph 1 of the application provides in relevant part: "Minimum coverage required by law is: $[5000] [b]asic reparations benefits, 20/40/5 liability insurance, and 20/40 uninsured motorist coverage. . . ."

[11] General Statutes § 38a-336 (f) provides in relevant part: "[A]n employee of a named insured injured while occupying a covered motor vehicle in the course of employment shall be covered by such insured's otherwise applicable uninsured and underinsured motorist coverage."

[12] General Statutes § 38a-371 (b) provides in relevant part: "The security

required by this section, may be provided by a policy of insurance complying with this section issued by or on behalf of an insurer licensed to transact business in this state . . . ."

[13] See footnote 5 of this opinion.

[14] General Statutes § 38a-363 provides in relevant part: "As used in sections 38a-17, 38a-19 and 38a-363 to 38a-388, inclusive . . .

"(b) 'Insurer' or 'insurance company' includes a self-insurer and a person having the rights and obligations of an insurer under sections 38a-19 and 38a-363 to 38a-388, inclusive, as provided by section 38a-371. . . ."

[15] The defendant has not asked us to reconsider our holding in *Piersa*. Therefore, although we conclude that the reasoning of *Piersa* cannot be extended to § 38a-336 (a) (2), we leave for another day both reconsideration of the distinction we made in *Piersa* between that statute and § 38a-334 (d) (1) (B) of the Regulations of Connecticut State Agencies, and the application of our "rough equivalence" doctrine for self-insurers to justify a prior writing requirement. We note that the "rough equivalence" achieved by requiring a self-insurer to elect regulatory limits of liability in writing is unlike the other applications of this doctrine that we examine in this opinion. Under *Piersa*, a self-insurer is faced with a pro forma administrative burden, but there is no notice to claimants, such as the plaintiff in this case, and no balancing of cost against benefit by the insured. In the individual commercial insurance context, the policy language requirement serves both as a way for insurers to limit liability and as a way for an insured, as the ultimate potential claimant for uninsured motorist coverage, to provide consent to the cost and benefit trade-off implied by the election of offsets.

[16] General Statutes § 38a-363 (b) provides: " 'Insurer' or 'insurance company' includes a self-insurer and a person having the rights and obligations of an insurer under sections 38a-19 and 38a-363 to 38a-388, inclusive, as provided by section 38a-371."

[17] In *Piersa*, it was undisputed that the municipality had affirmatively elected minimum statutory underinsured motorist coverage limits in a letter to the commissioner of insurance after the enactment of Public Acts 1983, No. 83-461, on July 5, 1983. Accordingly, the issue presented in this case and in *Boynton* was not presented in *Piersa*. The letter herein was silent regarding whether those limits would be further reduced by the offsets specifically permitted by the regulation.

[18] The plaintiff claims that *Piersa* rejects *Boynton*. It is true that in *Piersa*, this court rejected the city's claim that "by merely notifying the commissioner of its election to be self-insured, it automatically and as a matter of law must be deemed to have selected *both* the minimum coverage *and* all permitted reductions in limits." (Emphasis added.) *Piersa* v. *Phoenix Ins. Co.*, supra, 273 Conn. 530. As we have explained, however, in *Boynton*, the Appellate Court concluded that a self-insurer, by notifying the commissioner of insurance of its election to be a self-insurer, must be deemed to have selected the minimum statutory underinsured motorist coverage. *Boynton* v. *New Haven*, supra, 63 Conn. App. 828. In *Piersa*, this court acknowledged the Appellate Court's reasoning in *Boynton*, but concluded that a self-insurer could not be similarly deemed to have selected the permissive reductions in limits, or offsets, at issue in that case. *Piersa* v. *Phoenix Ins. Co.*, supra, 538–39.

[19] See footnote 2 of this opinion.

[20] General Statutes § 38a-336 (b) provides in relevant part: "An insurance company shall be obligated to make payment to its insured up to the limits of the policy's uninsured and underinsured motorist coverage after the limits of liability under all bodily injury liability bonds or insurance policies applicable at the time of the accident have been exhausted by payment of judgments or settlements . . . ."

[21] Section 38a-334-6 (c) of the Regulations of Connecticut State Agencies provides in relevant part: "The insurer's obligations to pay may be made inapplicable . . .

"(2) if the uninsured or underinsured motor vehicle is owned by . . .

"(b) a [self-insurer] under any motor vehicle law . . . ."

[22] General Statutes § 14-129 (c) provides in relevant part: "Failure to pay any judgment within thirty days after such judgment has become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance."

[23] The legislative history of Public Acts 1983, No. 83-461, further demonstrates the intent of the legislature to ensure consumer awareness of a trade-off between coverage and cost, not an intent to create a documentation trap for self-insurers who, by their substantive nature, do not face such a

trade-off: "[Subdivision 2 of §38-175 (c)] would require [that] each insured who purchases more than the legally required amount of liability insurance would receive the same amount of uninsured motorist coverage. The insured would have an opportunity to waive in writing the additional uninsured motorist coverage. This change would increase the consumer's awareness of the value of low-cost uninsured motorist coverage which protects the insured and his family members. Apparently many drivers purchase [$100,000] or more of liability coverage but leave their uninsured motorist coverage at the minimum of [$20,000 to $40,000]. [Subdivision] 2 . . . gives such a driver an increased amount of uninsured motorist coverage, unless he makes a conscious decision not to purchase it." 26 S. Proc., Pt. 9, 1983 Sess., p. 3055, remarks of Senator Wayne A. Baker.

[24] Generally, a commercial insurer's liability is limited by the amount of coverage provided by the insurance policy, and a commercially insured person's liability is limited by the coverage provided by the insurance and any underinsured motorist coverage available under the claimant's insurance.

[25] "'Self-insurance' is either capped by excess commercial exposure (with self-insured exposure resuming over the excess commercial insurance) or the exposure is totally self-insured. In either case, as to that entity which has chosen not to protect its exposure by commercial insurance, that exposure has to be, theoretically and logically, without limit. As a practical matter, it is limited only by the entity's ability to pay the judgment against it." J. Berk & M. Jainchill, Connecticut Law of Uninsured and Underinsured Motorist Coverage (4th Ed. 2010) § 1.4.1.A, p. 44 n.34.

[26] The court acknowledges the existence of commercial excess liability insurance available to self-insured entities and, for municipalities, municipal risk management pools under General Statutes §§ 7-479a through 7-479r. Such insurance is not, however, mandated by our motor vehicle insurance scheme and cannot operate to limit the rights of claimants.

[27] We note, however, that the Appellate Court's summary assertion that "[o]nce it is determined that the statutory minimum is applicable, the plaintiff's receipt of $25,000 from [the tortfeasor's] insurance carrier forecloses his access to further reimbursement from the [self-insuring] city" is no longer good law in light of this court's holding in *Piersa* that a self-insurer must document any election of a permissive offset under the regulation. *Boynton* v. *New Haven*, supra, 63 Conn. App. 827–28. Pursuant to our holding in *Piersa*, the plaintiff in *Boynton* could have sought reimbursement from the self-insurer for up to $20,000 for his damages in excess of the $25,000 paid on behalf of the tortfeasor, because the self-insurer had not documented its election of the permissive offset available under § 38a-334-6 (d) (1) of the Regulations of Connecticut State Agencies, pursuant to which a "policy may provide for the reduction of limits to the extent that damages have been (A) paid by or are payable on behalf of any person responsible for the injury . . . ."