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The South Carolina Unauthorized Insurers Act--Problems and Possibilities

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THE SOUTH CAROLINA UNAUTHORIZED INSURERS ACT—PROBLEMS AND POSSIBILITIES

In recent years there has been a tremendous growth in the business of "mail order" insurance. Many insurance companies maintain an office and own property only in the state where they are incorporated but offer insurance throughout the nation. Frequently they have no agents and new business is secured solely by advertisement and solicitation by mail.[1] Normally the amount of policy coverage sold by them is small. After a loss occurs, such an insurer frequently offers the insured an inadequate settlement on a take it or leave it basis. Sometimes the insurer may deny coverage altogether.[2] Without protective legislation, the insured is given no choice but to accept the insurer's offer, if any, or to sue the insurer in its home state. The insurer will in most cases have its own way, particularly if the amount involved is small.[3]

The Uniform Unauthorized Insurers Act was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association in 1938.[4] South Carolina adopted the act in substance in 1943[5] and enacted an amended version into its Insurance Code in 1947.[6] The act was designed to combat the deceptive practices of such "mail order" businesses.

Six years after the proposal of the Uniform Act, the Supreme Court held that insurance practices fell under the commerce clause and were therefore subject to federal regulation.[7] Congress almost immediately passed the McCarran-Ferguson Act[8] in which the regulation of insurers was left to the states. To prevent federal control, however, the states' regulation must be effective.[9]

1. Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743 (1958); see Dean, *The Foreign Unauthorized Insurer: A State Regulatory Gap*, July 1965 INS. COUNSEL J. 432.

2. See McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

3. Storey v. United Ins. Co., 64 F. Supp. 896 (E.D.S.C. 1946).

4. Historical Note, Uniform Unauthorized Insurers Act, 9C U.L.A. 303.

5. S.C. ACTS & J. RES. 1943, p. 210.

6. S.C. CODE ANN. §§ 37-261 to -272 (1962).

7. United States v. South Eastern Underwriters, 322 U.S. 533 (1944).

8. 59 Stat. 33, 34 (1945), as amended, 15 U.S.C. §§ 1011-15 (1959).

9. FTC v. Travelers Health Ass'n, 362 U.S. 293 (1960) held that, with regard to the unauthorized insurer, the states in which the insurer operates are required to maintain effective regulation. See text accompanying notes 77, 78, *infra*.

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Because of the need, and also through the impetus of the McCarran-Ferguson Act, all fifty states have adopted the Uniform Act or similar statutes.[10]

I. General Provisions

The first four sections of the South Carolina act prohibit any person from aiding or acting as an agent for an unauthorized insurer in this state.[11]

Section 5 contains the crucial provisions of the act. This provides that the issuance and delivery of an insurance policy by an unauthorized insurer to any person in this state, or the collection of a premium from such a person, will constitute the Commissioner of Insurance the lawful attorney upon whom service of process may be made in any actions in behalf of the insured arising out of the policy.[12]

Section 6 states that no unauthorized insurer can institute suit arising out of the transaction of the insurance business in South Carolina until it procures a license to do business in this state.[13]

Section 7 prohibits an unauthorized insurer from filing any pleading in any action instituted against it before posting a bond in an amount fixed by the court sufficient to satisfy any final judgment or procuring a certificate of authority to do business in this state.[14]

Section 8 provides that the unauthorized insurer may make a motion, without regard to Section 7, to set aside service on the ground 1) that no such policy has been issued, 2) that it has not been transacting business in this state, 3) that the person on whom service was made was not doing any of the acts enumerated.[15]

II. Jurisdiction

A. History

The principal objection to the unauthorized insurers acts was their questionable constitutionality.[16] Originally, in order for

10. For a collection of these statutes see ABA Proceedings 1964, Section of Insurance, Negligence and Compensation Law 232-33.
11. S.C. Code Ann. §§ 37-261 to -264 (1962).
12. S.C. Code Ann. § 37-265 (1962).
13. S.C. Code Ann. § 37-267 (1962).
14. S.C. Code Ann. § 37-268 (1962).
15. S.C. Code Ann. § 37-270 (1962).
16. Dean, *supra* note 1, at 439.

a state to acquire in personam jurisdiction over a non-resident, the non-resident had to be served with process within the state, or he had to make a voluntary general appearance.[17] This restriction gradually fell away, however, and in 1945 the Supreme Court held that in order to subject an absentee defendant to state jurisdiction, the due process clause requires only that he have minimum contacts with the state so that the maintenance of the suit does not "offend traditional notions of fair play and substantial justice."[18] This rationale was carried into the insurance field in 1950.[19]

In 1957 the matter was settled in *McGee v. International Life Ins. Co.*[20] The Court upheld the service portion of California's unauthorized insurers act where only one policy of insurance had been issued to a resident of that state. Mr. Justice Black, speaking for the Court, stated: "It is sufficient for the purposes of due process that the suit was based on a contract which had a substantial connection with that state."[21] A year later the South Carolina statute was tested in the state supreme court. In a similar factual context,[22] the court, basing its decision primarily on *McGee*, held the statute constitutional.

B. Construction

In order to use an unauthorized insurers act the plaintiff must first bring himself within the terms of the act. The act, by its nature, is limited solely to unauthorized insurers and cannot be used as an alternative mode of service against an authorized insurer.[23] Therefore, it does not deal with questions of venue. For example, if the insurer is licensed in the state and has its agent in one county, the act cannot be used to allow maintenance of the suit in another county.[24]

If the insurer, for any reason, has been exempted from the state's licensing requirements, the act would probably be construed as unavailable. In New York, for example, fraternal

17. Pennoyer v. Neff, 95 U.S. 714 (1878).

18. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

19. Traveler's Health Ass'n v. Virginia, 339 U.S. 643 (1950).

20. 355 U.S. 220 (1957); see Parmalee v. Iowa State Traveling Men's Ass'n, 206 F.2d 518 (5th Cir. 1953), *cert. denied,* 346 U.S. 877 (1953).

21. 355 U.S. at 223.

22. Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743 (1958); see Storey v. United Ins. Co., 64 F. Supp. 896 (E.D.S.C. 1946).

23. Hodges v. Home Ins. Co., 232 N.C. 475, 61 S.E.2d 372 (1950).

24. Liberty Bell Mut. Fire Ins. Co. v. Exum, 209 Ga. 548, 74 S.E.2d 738 (1953).

benefit societies are not required to obtain licenses to sell insurance. One New York court ruled that, because of this, such society is not an "unauthorized" insurer within the terms of that state's statute.[25]

C. Reach

Once the plaintiff shows that his case is within the literal terms of the statute he must prove that the unauthorized insurer has sufficient contacts with the state, so that maintenance of the suit would not exceed the jurisdictional authority of the state.

Normally the plaintiff can easily prove that; 1) he is a resident of the state, 2) the policy was solicited in the state, 3) it was issued and delivered to him there, and 4) he subsequently paid his premiums from the state. Proof of these facts is undoubtedly sufficient to confer jurisdiction.[26] If the plaintiff can prove other sales in the state this will make the state's authority clearer, but in most cases this is difficult and not a necessity.[27] The above facts provide a safe and concrete minimum. Problems arise when there is something less.

The defendant may contest jurisdiction by directly attacking the constitutionality of the statute. In the majority of cases, however, the direct constitutionality is not in issue.[28] The South Carolina act expressly allows the defendant to appear specially to set aside service on the ground that it has not issued a policy to a South Carolina resident or that it has not been transacting business in this state.[29]

The plaintiff always carries the burden of proving the defendant's contacts. An averment by the defendant that it was not

25. Gentile v. Air Line Pilots Mut. Aid Ass'n, 40 Misc. 2d 291, 243 N.Y.S.2d 50 (N.Y. City Civ. Ct. 1950); The plaintiff should also make sure the defendant is actually an insurance company. This problem has mainly arisen in suits against Lloyds of London which is not a company but rather an association of individual insurers. See, *e.g.*, Atex Mfg. Co. v. "Lloyds of London", 139 F. Supp. 314 (W.D. Ark. 1955).

26. S.C. CODE ANN. § 37-265 (1962).

27. McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743 (1958). The more restrictive earlier cases such as Employers Liab. Assur. Corp. v. Lejeune, 189 F.2d 521 (5th Cir. 1951) and White v. Indiana Travelers Assur. Co., 22 So. 2d 137 (La. App. 1945) have been superseded by *McGee, supra.*

28. The plaintiff can at times aid his case where normally insufficient contacts would exist by proving additional factors, for example, that there was an agent in the state. See Naso v. National Union Fire Ins. Co., 156 F. Supp. 611 (S.D.N.Y. 1957).

29. See, *e.g.*, Storey v. United Ins. Co., 64 F. Supp. 896 (E.D.S.C. 1946).

doing business in the state has been held to establish a prima facie case that the plaintiff's service upon the superintendent of insurance gave no jurisdiction over the company.[30]

The courts have resolved the question of jurisdiction on the basis of general fairness.[31] If the insurer solicits contracts in the state and no one purchases, it has done nothing to bind itself to the state. Likewise, if a policy is sold in the state without its knowledge it should not be held liable there.[32] Once solicitation in the state results in the purchase of a policy by a resident, the insurer, through its own initiative, has established a continuing relationship with the state and it is fair to allow a suit by the insured there. In such a context a state has been held to have jurisdiction even though the insured property was located in another state,[33] and the fact that the insured personally purchased his policy at the insurer's office in another state has been held not to defeat jurisdiction.[34]

The character of the residence of the purchaser should make no difference for jurisdictional purposes as long as he will be in the state a sufficient time that the insurer could reasonably expect that a loss might possibly occur there.[35]

D. Peculiar Problems

The South Carolina act states that the issuance and delivery of a policy to any person in this state *or* the collection of a premium from such a person is sufficient to confer jurisdiction.[36] This involves a nebulous and intricate constitutional area and, regardless of the language used, it would seem that the statute cannot constitutionally be applied to an insurance company which does not have certain minimum contacts with the state.

The act, as passed in 1943, required as a prerequisite for jurisdiction that the unauthorized insurer issue or deliver an insur-

30. S.C. CODE ANN. § 37-270 (1962).

31. Weinstein v. Occidental Life Ins. Co., 206 Misc. 128, 134 N.Y.S.2d 207 (Sup. Ct. 1954).

32. See McGee v. International Life Ins. Co., 355 U.S. 220 (1957); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

33. See Wash v. Western Empire Life Ins. Co., 298 F.2d 374 (8th Cir. 1962).

34. Zacharakis v. Bunker Hill Mut. Ins. Co., 281 App. Div. 487, 120 N.Y.S. 2d 418 (Sup. Ct. 1953).

35. Groff v. Automobile Owners Safety Ins. Co., 180 Kan. 518, 306 P.2d 130 (1957).

36. This question has arisen with regard to servicemen who are normally only temporary residents where stationed. The better reasoning is to allow suits by them. See Polglase v. Illinois Nat'l Ins. Co., 183 F. Supp. 519 (N.D. Cal. 1960); Vehrs v. Jefferson Ins. Co., 168 So. 2d 875 (La. App. 1964); *but see* Johnson v. Universal Underwriters, Inc., 283 F.2d 316 (7th Cir. 1960).

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ance policy to a resident of this state.[37] In *Sanders v. Columbian Protective Ass'n*,[38] the court was faced with a case in which the insured, domiciled in New York, purchased a policy there from a New York insurer and subsequently resided in South Carolina. He died in Belgium. While the insured lived in this state he regularly mailed his premiums to the defendant's offices in New York. The defendant was an unauthorized insurer and apparently had no other contacts with this state. The plaintiff, a resident, sued as beneficiary. The court held that it lacked jurisdiction under the statute since the policy had not been issued or delivered to a resident of this state.

In the following year, 1947, South Carolina adopted its Insurance Code and the section was enlarged to provide jurisdiction if the unauthorized insurer collects a premium from a resident of this state.[39] Although now the statute would seem to clearly cover the situation raised in *Sanders*, there is dicta in a later case that this provision would not be given a literal interpretation.[40]

Some courts have indicated that such an application of the statute would be unconstitutional.[41] The Supreme Court has held, in a case that did not involve insurance, that "in each case there must be some act by which the defendant purposely avails itself of the privileges of conducting activities within the forum state, thus invoking the benefits and protections of its laws,"[42] and that the unilateral action of one party is not sufficient. The fact that the insured mails premiums from the state would seem at first glance, a matter over which the insurer could have no control.[43] If the insured resides in this state for any period of time, however, the state should be able to acquire jurisdiction. If the insurer is not willing to be sued in the state it can always reject the premium payments or discontinue the policy. One court has stated that the result of accepting such premiums is precisely the same as that of agents personally collecting the

37. S.C. Acts & J. Res. 1943, p. 211.

38. 208 S.C. 152, 37 S.E.2d 533 (1946).

39. S.C. Acts & J. Res. 1947, p. 355, S.C. Code Ann. § 37-265 (1962).

40. Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743 (1958).

41. Parmalee v. Iowa State Traveling Men's Ass'n, 206 F.2d 518 (5th Cir. 1953); Weinstein v. Occidental Life Ins. Co., 206 Misc. 128, 134 N.Y.S.2d 207 (Sup. Ct. 1954).

42. Hanson v. Denckla, 357 U.S. 235, 253 (1958).

43. See Sanders v. Columbian Protective Ass'n, 208 S.C. 152, 156, 37 S.E.2d 533, 534 (1946).

premiums instead of sending notices and receiving remittances through the mails.[44]

McClanahan v. Trans-American Ins. Co.[45] provides a good illustration of how injustice could have resulted from a narrow interpretation of state jurisdiction. There, the insured purchased an automobile liability policy from an Alabama insurer and then moved to California where he resided for a short period and was involved in an accident. The defendant insurer investigated the claim and defended the suit. Losing the case, it left the state and claimed lack of jurisdiction in the later suit by the judgment creditor. Fortunately the court held that jurisdiction had been acquired.[46]

III. Parties Entitled to Use the Statute

The South Carolina act states that it is available in any actions brought on behalf of the insured.[47] It has been held in this state that the insured[48] or a beneficiary[49] can use the statute. Under a similar statute a New York court has, in a well reasoned opinion, allowed its use by a judgment creditor.[50] There the court said that there were no constitutional objections but rather the question was one of statutory construction. The court concluded that the general import of the statute was to protect New York residents on obligations voluntarily assumed by the insurer. This required the inclusion rather than the elimination of the judgment creditor as a permissible suitor, since he is a "beneficiary" of the policy. In other cases this use has been allowed

44. Schutt v. Commercial Travelers Mut. Acc. Ass'n, 229 F.2d 158, 159 (2d Cir. 1956).

45. 307 P.2d 1023 (Cal. App. 1957).

46. Humble Oil & Refining Co. v. M/V John E. Coon, 207 F. Supp. 45 (E.D. La. 1962) allowed application of the statute where the only contact with the state was the occurrence of an accident there. The case of Canadian Indem. Co. v. State Auto. Ins. Ass'n, 126 F. Supp. 819 (N.D. Cal. 1954) presents perhaps the most extreme attempt to use the statute. There a non resident insurer of a California resident attempted to use the statute against an Iowa insurer of an Iowa corporation, both of which were not authorized to do business in California, by showing that the corporation was actually doing business there. It failed.

47. S.C. Code Ann. § 37-265 (1962).

48. Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743 (1958).

49. Storey v. United Ins. Co., 64 F. Supp. 896 (E.D.S.C. 1946). The plaintiff probably would not be considered an "insured" or "beneficiary" of a policy reinsuring the unauthorized insurer. See Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (M.D.N.C. 1962); *but see* Food Fair Stores v. General Excess Ins. Co., 21 App. Div. 2d 684, 250 N.Y.S.2d 458 (1964).

50. Kaye v. Doe, 204 Misc. 719, 125 N.Y.S.2d 135 (Sup. Ct. 1953).

without discussion.[51] Where the plaintiff is only a general creditor and has not acquired any matured claims against the insured, he is not considered a "beneficiary" under such a statute.[52]

The act cannot be used by a person who is not an insured, beneficiary or judgment creditor. The acts of the insurer sufficient to bestow jurisdiction under the statute may not be sufficient to allow suit by a person who is not covered. *Rosenberg v. Andrew Weir Ins. Co.*[53] involved an action by a claims agent on a contract for claims services. He argued that the contacts with the state were such that the insured under the particular policy could clearly have maintained an action. The court held that the same minimum acts do not necessarily constitute "doing business" in the state for the purposes of a different type suit. The suit was dismissed for lack of jurisdiction.

The South Carolina statute speaks only of issuance and delivery of a policy to a "person."[54] It does not refer to a corporation. A later section allows the insurer to appear specially to set aside service on several grounds.[55] One of these is that it has not issued a policy to a corporation licensed to do business in this state. In spite of the apparent inconsistency, a corporation should be considered within the terms of the act.

If a corporation is domiciled in the state and its principal place of business is there, little difficulty is seen in allowing the maintenance of a suit by it.[56] It has been held that where the policy was actually delivered in a state, a corporation domesticated in that state could maintain a suit.[57]

Where the corporation does business in many states, however, a line must be drawn. Otherwise the corporation could pick the most advantageous forum and bring its suit there. Where such an attempt at "forum shopping" has apparently occurred the courts have held that the suit could not be maintained.[58]

51. *E.g.*, Polglase v. Illinois Nat'l Ins. Co., 183 F. Supp. 519 (N.D. Cal. 1960).

52. Kennedy v. Long Island R.R., 26 F.R.D. 589 (S.D.N.Y. 1960).

53. 154 F. Supp. 6 (D. Md. 1957).

54. S.C. CODE ANN. § 37-265 (1962).

55. S.C. CODE ANN. § 37-270 (1962).

56. Of course a domestic corporation cannot bring suit under the statute as assignee of a foreign corporation which is not authorized to do business in the state. Food Fair Stores v. General Excess Ins. Co., 21 App. Div. 2d 684, 250 N.Y.S.2d 458 (1964).

57. Aero Associates, Ins. v. La Metropolitana Compania, 183 F. Supp. 357 (S.D.N.Y. 1960).

58. *E.g.*, Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (M.D.N.C. 1962); Clifton Products, Inc. v. American Universal Ins. Co., 169 F. Supp. 842 (S.D.N.Y. 1959).

IV. Permissible Actions

The statute is normally applied where there is a valid contract and, after the loss has occurred, suit is brought to enforce it. South Carolina, in addition, has construed the statute to cover any action arising out of a contract of insurance.[59] The action may be either in contract or tort and punitive damages are allowable even if the total amount of the suit is more than the face value of the policy. The only qualification is that the action must not be one which, by its nature, denies the issuance of a valid contract. For example, while an action may be brought for fraudulent breach of contract, there is no right of action for fraud and deceit in inducing the purchase.[60]

The act relates only to service of process. It does not confer on the plaintiff the procedural benefits of the state and federal courts. In *Lawson v. Creely*[61] the court said the act was intended for service of process only and held that the plaintiff could not, under the act, compel the insurer to obey a subpoena commanding the production of an original insurance policy.

V. The Unauthorized Insurer—Defenses and Hardships

An unauthorized insurer can expressly assert lack of jurisdiction on the basis that no contract of insurance has been issued; that it is not transacting business in this state; or, that service has been made on an improper person.[62]

In addition it has been held that the insurer is protected if the person selling the policy had no apparent authority to do so.[63] A more difficult question is presented where an agent sells the policy outside of his allotted territory and without the knowledge of the insurer that the policy was issued in the particular state. At least one court has allowed the insurer to successfully defend a subsequent action by the policy holder in this situation on the basis of lack of jurisdiction.[64]

Aside from these defenses, the unauthorized insurer is under extreme hardship in conducting any defense. It has no right to

59. Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743 (1958).

60. *Ibid.*

61. 268 S.W.2d 41 (Mo. App. 1954).

62. S.C. Code Ann. § 37-270 (1962).

63. Atex Mfg. Co. v. "Lloyds of London", 139 F. Supp. 314 (W.D. Ark. 1955).

64. Wash v. Western Empire Life Ins. Co., 298 F.2d 374 (8th Cir. 1962).

file any pleading without posting a bond or obtaining a license to do business. It also is not allowed to have any agent in the state to adjust or investigate the loss, unless the property or person was insured in a state other than the one where loss occurred *and* written authority is obtained from the commissioner of insurance.[65]

Also, while the policy issued is valid and binding on the insurer, the courts of the state are closed to it on any suit arising out of the contract *until* the unauthorized insurer procures a license to do business in the state.[66] In any action by a foreign insurer, an affidavit by the insurer's counsel that the insurer is not doing business in the state is not controlling.[67]

VI. The Bonding Provision

The most onerous section of the act for the unauthorized insurer is the bonding provision. Before the insurer can file a pleading in an action against it a bond must be posted in an amount fixed by the court sufficient to satisfy any final judgment, even though the suit is for more than the amount of the policy. In the alternative it can procure a license to do business in this state.[68] Often this is not a realistic choice since the insurer may not be able to obtain a license.

While this imposes a hardship on the insurer, it is vitally necessary for the protection of the plaintiff. Normally the unauthorized insurer will have little, if any, property in the state, and even though the plaintiff obtains a judgment, he will be forced to go into the insurer's home state for enforcement purposes. This, at best, will require added time and expense.

The greatest problem, however, is that since the money judgment of one state cannot be the basis for collection in another[69] the insured who obtains a judgment in his home state would be forced to enter the courts of the insurer's state and obtain a second judgment based upon the first. In this second action the

65. S.C. Code Ann. § 37-264 (1962). See also general exemptions included in this section.

66. S.C. Code Ann. § 37-267 (1962). Those insurers which issued policies at a time when authorized are exempted from this section.

67. Empire Mut. Ins. Co. v. International Tram-Po-Line Mfrs. Inc., 39 Misc. 2d 810, 242 N.Y.S.2d 28 (Sup. Ct. 1963).

68. S.C. Code Ann. § 37-268 (1962).

69. Paulson, *Enforcing the Money Judgment of a Sister State*, 42 Iowa L. Rev. 202 (1957); for a good discussion of this whole area see Dean, *The Foreign Unauthorized Insurer: A State Regulatory Gap* July 1965 Ins. Counsel J. 432, 440-42.

insurer can raise additional defenses that the plaintiff will be forced to overcome.[70] There is the possibility that in the succeeding litigations a deserving plaintiff may find himself precluded from a remedy on procedural technicalities.[71]

Even though a bond is required, the amount is left to the discretion of the court.[72] This means that it could be for less than the value of the policy or even less than the amount of the suit. In one New York case, the bond was set at 8,000 dollars although the total value of the policy was 100,000 dollars.[73]

By obtaining a court order requiring a bond, a plaintiff can materially aid his case in certain situations since this provides a financial hindrance to the insurer. In *Vehrs v. Jefferson Ins. Co.*,[74] the defendant insurer, then in precarious financial straits, rather than post the bond, elected to suffer a default judgment.

Once the bond is posted it may be held to be in trust to satisfy any judgment obtained even though prior to the judgment, the insurer is dissolved or becomes bankrupt.[75] On the other hand, if the plaintiff had sued in the insurer's home state he might well be only a general creditor.

The important caveat to be remembered by the plaintiff, is that the act was primarily intended for service of process; therefore, if jurisdiction is obtained without use of the act, the bonding provision should be unavailable to the plaintiff.[76]

VII. Conclusion

Section 2(b) of the McCarren-Ferguson Act provides that "(T)he Federal Trade Commission Act,... shall be applicable to the business of insurance to the extent that such business is not regulated by state law."[77]

70. These may be lack of jurisdiction, lack of finality, the running of the statute of limitations and the payment or discharge in bankruptcy. Paulson, *supra* note 69, at 204.

71. Dean, *supra* note 69, at 441.

72. S.C. Code Ann. § 37-268 (1962).

73. Kraus v. Monticello Ins. Co., 160 N.Y.S.2d 27 (Sup. Ct. 1957).

74. 168 So. 2d 873 (La. App. 1964).

75. Dean Const. Co. v. Agricultural Ins. Co., 22 App. Div. 82, 254 N.Y.S.2d 196 (1964). South Carolina has held that the bond deposited by an authorized insurer can be retained after bankruptcy. Clark v. Preferred Acc. Ins. Co., 231 S.C. 167, 97 S.E.2d 498 (1957).

76. See Arnold Chait, Ltd. v. La Metropolitana, Compania, 207 N.Y.S.2d 22 (Sup. Ct. 1960).

77. 15 U.S.C. 1011 (1959).

The Supreme Court in *FTC v. Travelers Health Ass'n*[78] held that where a mail order insurance company was not effectively regulated by a state, that company's activities were subject to federal surveillance through the regulative authority of the FTC.

Although an unauthorized insurers act can create hardships for unauthorized insurers, it is a vitally necessary regulatory measure for the states—without it a deserving plaintiff can be left without an available remedy. In addition, the act is necessary to protect the individual states' regulatory powers granted by Congress.

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78. 362 U.S. 293 (1960).