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INSURANCE

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Unfortunately for the writers of surveys such as this one the cases decided on a given subject in a given year do not fall into neat categories ready for orderly review and analysis. The reviewer is faced with a number of cases most of which have nothing in common with each other except that they fall or can be forced into some recognized division area as broad as contracts, property or, as here, insurance. It is difficult for the author of a survey article to avoid the charge that he has done nothing more than string together a number of case condensations. Occasionally, however, the reviewer is lucky enough to find that several of the cases in his survey group have something in common beyond merely falling within that broad group, giving him an opportunity to develop an area. The format has been here adopted of giving such an area a subtitle under which a group of cases are outlined and commented upon. But of necessity isolated cases remain to be reviewed and must be grouped under the subtitle "Miscellaneous."

A. Coverage on Non-Owned Automobiles—Exclusions

Three cases decided during the survey period dealt with exclusions under non-owned automobile coverage. Coverage on non-owned automobiles has become almost standard in automobile insurance policies. Its purpose is to give an insured who has coverage on a described, owned automobile protection when the insured uses a non-owned automobile. Such insurance is afforded in recognition of the fact that an insured may from time to time use automobiles which are not protected by the type coverage which he carries on the vehicle described and covered by his policy. An insurer is willing to cover such a non-owned automobile where the use by its insured is casual and the non-owned automobile is of the type covered in the policy, in most situations a private passenger automobile. However, an insurer does not wish this coverage to extend to a non-owned automobile used regularly by an insured, since such an extension of coverage could result in the risk to the insurer being greatly increased. Therefore, after the grant of non-ownership cover-

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age, the insurer must undertake to limit it by exclusions.[1] It is interesting to note that in the years prior to this survey period no case had ever come before the South Carolina Supreme Court or a United States District Court for South Carolina interpreting these policy provisions, whereas during the survey period of one year three cases were decided involving such exclusions.

In *Commercial Ins. Co. v. Gardner*[2] the insurer of Gardner brought a declaratory judgment action seeking a ruling that it afforded no coverage to Gardner under the liability provisions of its policy covering Gardner's automobile for an accident which occurred while Gardner was driving a police patrol car furnished him by the city of Columbia, South Carolina, for use in his job as a city patrolman. The city maintained a fleet of patrol cars, and Gardner from time to time used various cars from this fleet, spending a number of hours each week in one or another of these cars. The policy language granted liability coverage to Gardner for injury or damage to a claimant while driving a non-owned automobile, but defined a non-owned automobile as one not furnished for his "regular use," and excluded from non-owned automobile coverage use of a non-owned automobile "in any business or occupation of the insured except a private passenger automobile operated or occupied by the named insured." The insurer took the position that the police car was furnished for "regular use," was used in Gardner's "business or occupation," and was not a "private passenger automobile." The court agreed and found for the insurer. The contention of Gardner that since he used many different cars from the pool, no one car, including the one he was driving at the time of the

1. Strictly speaking the limitation is not always an exclusion; it may be a failure of inclusion, *e.g.*, in Commercial Ins. Co. v. Gardner, 233 F. Supp. 884 (E.D.S.C. 1964), one of the cases discussed herein, the policy under consideration undertook to pay liability claims "arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile"; the policy then defined a non-owned automobile as one "not owned by or furnished for the regular use of either the named insured or any relative." To accomplish the same result the policy under consideration in Glisson v. State Farm Mut. Auto. Ins. Co., 246 S.C. 76, 142 S.E.2d 447 (1965), also one of the cases herein, undertook to pay liability claims "arising out of the ownership, maintenance, or use of the automobile," and defined "automobile" as the vehicle described in the policy; the policy then under insuring agreement five extended certain coverages including the liability coverage to "any other automobile" but provided by exclusion that insuring agreement five would not apply "to any automobile owned by . . . or furnished for regular use to the named insured or a member of his household." The distinctions noted between inclusion and exclusion in the policy language had no apparent bearing on the decisions reached in these cases.

2. 233 F. Supp. 884 (E.D.S.C. 1964).

accident, was furnished for regular use was overruled. The court relied upon the case of *Voelker v. Travelers Indem. Co.*[3] which held that Voelker, who had liability coverage with the defendant insurer, was not entitled under his non-owner's coverage to protection for an accident which occurred while he was driving a jeep returning from a two-week encampment with the national guard of which he was a member. The court held the jeep was furnished for his "regular use" even though he had never driven the particular jeep before inasmuch as the entire fleet of jeeps was subject to his use.

Glisson v. State Farm Mut. Auto. Ins. Co.[4] was an action instituted by the plaintiff against the defendant, the insurer of Clyde Cheezem, to collect on a judgment obtained against Cheezem as a result of an accident which occurred when Cheezem, driving a jeep as a part of his job while on temporary active duty with the national guard, negligently injured the plaintiff. Cheezem was a Methodist minister and earned his livelihood in this profession, but while on temporary active duty with the national guard he received compensation from federal funds. At the time of the accident he was officer of the day and was driving the jeep in that capacity. There was no evidence before the court that Cheezem ever used an army vehicle other than on the one day that he was officer of the day. The defendant's policy, after extending liability protection on non-owned automobiles, excluded from such extension automobiles "furnished for regular use to the named insured" and "any automobile while used in the business or occupation of the named insured or spouse except a private passenger automobile operated or occupied by such named insured." Upon a decision in favor of plaintiff, defendant appealed, asserting that the trial judge erred in failing to find that the jeep was "furnished for regular use" and in failing to find that such jeep was "used in the business or occupation" of Cheezem. The "regular use" argument was summarily put to rest by the court:

> At the time of injury, Cheezem was temporarily engaged in the duty of Officer of the Day, thus performing a different duty than that normally required of him. The 'jeep' was not furnished for his regular use but, rather, was assigned to him for use in performing the duty of Officer

3. 260 F.2d 275 (7th Cir. 1958).
4. 246 S.C. 76, 142 S.E.2d 447 (1965).

> of the Day. There is no evidence in the record as to how frequently Cheezem used this 'jeep'; however, his use thereof was necessarily limited as he could only use this vehicle if it was properly dispatched to him.[5]

The "used in the business or occupation" argument gave the court more trouble. The court reviewed a number of cases from jurisdictions, including *Voelker v. Travelers Indem. Co.*, which held that temporary national guard duty was an insured's business or occupation within the meaning of an exclusion on a non-owned automobile. Rejecting these cases and finding that "business" or "occupation" means constant employment and principal livelihood, the court held that Cheezem was not using the jeep in his business or occupation and affirmed the decision of the trial court.[6]

In *Grantham v. United States Fid. & Guar. Co.*[7] the defendant issued to Mrs. Charlotte Grantham its automobile insurance policy which included medical payments coverage. The medical payments coverage extended to non-owned automobiles, but contained exclusion from coverage while an insured was riding in an automobile "furnished for the regular use" of the insured or relatives. Mrs. Grantham was killed while riding in a car owned by Beaufort County which was being operated at the time of her death by her husband, a deputy sheriff. The insured's husband had been a deputy sheriff for six years prior to the accident and during that entire period had been furnished a county automobile for business and personal use in Beaufort County. However, he had no permission to drive this car on personal business outside the county. The accident which gave rise to the claim occurred out of the county while the automobile was

5. The quoted language by emphasizing that Cheezem had never used the particular jeep in question rather than emphasizing that Cheezem had never used any jeep perhaps indicates that the court would reject as "regular use" a vehicle pulled from a pool available for regular use within the meaning of the exclusion unless the particular vehicle pulled was regularly used, thus placing this case in conflict with the *Gardner* case. In reaching its decision on this point the *Gardner* case relied upon *Voelker v. Travelers Indem. Co.*, which was rejected by the court in the *Glisson* case now being surveyed on another point, *i.e.*, whether national guard duty is or is not business.

6. While the court did not consider the point, the clause of the policy before it excluded coverage for an automobile used in *"the business* or occupation" (emphasis added) of the insured, whereas the court in the *Voelker* case, which held that temporary national guard duty was an insured's business or occupation was considering an exclusion such as was before the court in the *Gardner* case, which excluded coverage for an automobile used in *"any* business or occupation" (emphasis added) of the insured.

7. 245 S.C. 144, 139 S.E.2d 744 (1965).

being driven by the deputy sheriff on personal business. He had, however, obtained special permission to make this trip out of the county. The plaintiff sought to get around the "regular use" clause by asserting that the automobile was not furnished for regular use without the county. The court, on appeal by the plaintiff from a finding for the defendant in the trial court, rejected this theory, holding:

> The fact that permission was obtained, or that this may have been the first time the car was used to make a personal trip out of the county, is not controlling under the facts of this case. The undisputed facts are that the use, for which permission was obtained, was of the same nature as that for which the vehicle was provided and was entirely in accord with the agreement under which it was furnished.[8]

B. Ownership, Maintenance, or Use—What Constitutes Use

Two cases decided during the survey period considered whether there was a "use" of a vehicle within the meaning of coverage provisions of automobile insurance policies which required as a condition of coverage attaching that there be a loss "arising out of the ownership, maintenance or use" of the insured vehicle.

In *Wrenn & Outlaw, Inc. v. Employers' Liab. Assur. Corp.*[9] a Miss Coleman who had an automobile liability insurance policy issued by the defendant was injured when a bag boy working for the plaintiff, Wrenn and Outlaw, Inc. (hereinafter called Wrenn), slammed the door of her automobile on her hand after loading the groceries she had purchased from Wrenn. Miss Coleman sued Wrenn. Wrenn's insurer admitted it was liable on the risk but asserted that under its policy the coverage afforded Wrenn was excess over the policy written by the defendant covering Miss Coleman's car. The defendant asserted it had no liability under its policy with Miss Coleman. Wrenn's insurer therefore proceeded to defend Miss Coleman's suit, and after having lost it and paid off the judgment, brought this action (under a loan receipt) in the name of its insured against the defendant, seeking reimbursement for its loss in defending and paying off the judgment to Miss Coleman. The lower court

8. *Id.* at 149, 139 S.E.2d at 747.
9. 246 S.C. 97, 142 S.E.2d 741 (1965).

ruled against the plaintiff and the plaintiff appealed. The South Carolina Supreme Court in reversing the case succinctly outlined the coverage problem:

> The principal issue before us is whether under the facts of the case any coverage was afforded Wrenn under the policy issued by Employers' to Miss Coleman. The policy of Employers' provides coverage for legal liability to pay damages because of bodily injury 'sustained by any person; ... arising out of the ownership, maintenance or use of the owned automobile.' Insured against such liability, in addition to the named insured, is 'any other person using such automobile, provided the actual use thereof is with the permission of the named insured.' Also insured is, 'Any other person or organization legally responsible for the use of an owned automobile, ... provided the actual use thereof is by a person who is an insured under' the the terms of the policy.
>
> Under definitions, the policy contains the following language:
>
> " 'Use' of an automobile includes the loading and unloading thereof."
>
> There is no contention that the activity of the bag boy here was not with permission of the named insured, Miss Coleman, and the key question is whether the activity of the bag boy as disclosed by the record constituted "use" of the Coleman automobile within the meaning of the policy. If his activity did constitute such use, the bag boy was insured, and the policy clearly afforded coverage to Wrenn, since Wrenn was legally responsible for the acts of its servant the bag boy.[10]

The court then held the "use" was grocery shopping and in grocery shopping it is necessary to load the groceries and loading involves closing doors. Since the bag boy was using the car with permission, and since Wrenn was responsible for his acts as servant, coverage was present under the defendant's policy.

In *Federated Mut. Implement & Hardware Ins. Co. v. Gupton*[11] the plaintiff, the insurer of Riggs Esso Service Station (hereinafter called Riggs), brought a declaratory judgment action seeking a determination that it owed no duty under its

10. *Id.* at 102, 142 S.E.2d at 743.
11. 241 F. Supp. 509 (E.D.S.C. 1965).

policy issued to Riggs to appear and defend an action instituted by the defendant Gupton against one Minnie Lou Williams, an uninsured motorist. Minnie Lou Williams ran out of gas and walked to the station of Riggs where Gupton, an employee of Riggs, filled a can with gas. Gupton then took a truck owned by Riggs on which the plaintiff had coverage and drove back to Mrs. Williams' automobile. He parked the truck about six feet behind her car and began pouring the gas into it while she tried to start the car. Suddenly the Williams' automobile moved backwards pinning Gupton between the two vehicles and seriously injuring him. Pointing out that the policy of the plaintiff must conform to the relevant state statutes concerning insurance coverage, the court quoted a section of the South Carolina Code which defines "insured" as including (among others) "any person who uses [the described vehicle] . . . with the consent . . . of the named insured,"[12] and another section which provides that no insurer shall issue an automobile liability policy "unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use"[13] of the insured vehicle and held that before Gupton could claim the benefits of uninsured motorist coverage by the plaintiff on the Williams' automobile, he had to come within the statutory requirements showing that he was an insured and that the accident arose out of the use of Riggs' vehicle. No point was made concerning the former as it was apparent from the facts that Gupton was driving with Riggs' permission and was therefore an insured. However, whether the accident arose out of the *use* of the Riggs' truck gave the court more trouble. Relying on *Coletrain v. Coletrain*[14] among other cases, the court refused to limit "use" to physical operations or driving and ruled that the use here was the delivery of gasoline which was contemplated by the parties when the insurance contract was created. The court, therefore, denied the plaintiff's claim.

C. Ownership—Meaning As Used In Automobile Insurance Coverage

A series of cases decided during the survey period concerned insurance coverage based upon ownership as that term is used

12. S.C. CODE ANN. § 46-750.31(2) (Supp. 1965).
13. S.C. CODE ANN. § 46-750.32 (Supp. 1965).
14. 238 S.C. 555, 121 S.E.2d 89 (1961).

in various policy provisions, the usual problem in the cases being that record title was in one person but the argument was made that true ownership was in another.

The first case of this series was *Bankers Ins. Co. v. Griffin.*[15] In this case Merdy Griffin had as of May 31, 1963, a policy with Bankers Insurance Company on a described automobile, and his brother, Henry Griffin had as of the same date a policy with Nationwide Mutual Insurance Company on a described vehicle. On May 31, 1963, Merdy Griffin attempted to buy from Malcolm Carter Motor Company a 1960 Pontiac. His credit was not good, so the salesman suggested that the car be bought in another's name. Henry Griffin, whose credit was good, agreed to sign the note and mortgage and as a result the automobile was registered in Henry Griffin's name and the South Carolina Highway Department issued a title certificate in his name. Bankers Insurance Company, Merdy Griffin's insurer, issued an endorsement covering this new car. On June 8, 1963, the 1960 Pontiac was involved in an accident. Bankers brought a declaratory judgment action seeking among other things a declaration that Nationwide was on the risk since the Nationwide policy provided automatic coverage for newly acquired automobiles the "ownership" of which was acquired by the insured. The court quoted the South Carolina Code[16] which provides that "a certificate of title issued by the [Highway] Department is *prima facie* evidence of the facts appearing on it," but concluded that under the facts this presumption had been overcome, and, since Henry Griffin had never acquired "ownership," the 1960 Pontiac was not covered by the Nationwide policy.

Hanna v. State Farm Mut. Auto. Ins. Co.[17] arose out of a series of sales of a 1953 Ford. This automobile was owned by Glennie S. Miller and was insured by State Farm. On September 9, 1961, Miller traded this car on a 1960 Plymouth to Manning Conlin, an automobile dealer, endorsing the certificate of title over to him in blank and delivering it and the registration card to him. On September 18, 1961, Miller informed the defendant State Farm of the change of cars, and State Farm shortly thereafter issued a new policy identical to the policy on the 1953 Ford except that the policy number was changed and

15. 244 S.C. 552, 137 S.E.2d 785 (1964).
16. S.C. CODE ANN. § 46-150.11 (1962).
17. 233 F. Supp. 510 (E.D.S.C. 1964).

the description of the vehicle insured was changed from the 1953 Ford to the 1960 Plymouth. In the meanwhile on September 18, 1961, Manning Conlin sold the 1953 Ford to Wade Conlin, another automobile dealer, delivering to him the certificate of title still endorsed in blank and the registration card. On September 19, 1961, Wade Conlin sold the car to "Pappy" Martin and delivered the certificate of title and registration card to him. On September 30, 1961, Martin sold the car to Willie H. McGee but did not deliver the certificate of title or registration card to him because he, Martin, had not filled in the certificate. After filling in the certificate of title before a notary, but before delivery of the certificate and registration card to McGee, McGee, while driving the 1953 Ford, was involved in an accident with the automobiles of George McCrea, Jr. and Blanche D. Hanna. Blanche had her automobile liability insurance with St. Paul Fire and Marine Insurance Company. She was killed and her husband, Norman Hanna, the driver of her automobile, was injured. Her estate instituted suit against McCrea and McGee as did her husband. St. Paul defended McGee as an uninsured motorist. Mr. Hanna's case, with his administrator substituted as plaintiff after his death, resulted in a verdict against McGee only in the amount of 1,500 dollars actual damages and 10,000 dollars punitive damages. The suit by Mrs. Hanna's executors was then settled, with McCrea's insurer and St. Paul each making a contribution. St. Paul then instituted this suit in the name of the estate of Mrs. Hanna, as subrogee of the payments made to her under its uninsured motorist coverage, against State Farm, asserting that State Farm had coverage on the McGee vehicle. The administrator of Mr. Hanna then sued St. Paul seeking to collect the punitive damages assessed against McGee under the uninsured motorist endorsement of St. Paul's policy on his wife's automobile. These cases were consolidated for trial. Based upon *Laird v. Nationwide Ins. Co.*[18] the court held punitive damages not recoverable under an uninsured motorist endorsement. The claim was made that, since State Farm's policy on Miller's 1953 Ford provided coverage for damages arising out of the "ownership, maintenance, or use" of the described automobile and the policy covered as an insured any person operating with the permission of the named insured, and, that

18. 243 S.C. 388, 134 S.E.2d 206 (1964). Of course, by amendment now codified as S.C. CODE ANN. § 46-750.31(4) (Supp. 1965), punitive damages are recoverable under an uninsured motorist endorsement.

Miller was still the "owner" because he had not complied with the statutory provisions to effectuate a transfer of the certificate of title, and, since McGee was driving with Miller's permission,[19] State Farm was on the risk. The South Carolina Code[20] provides that an owner at the time of the sale of his vehicle shall "execute an assignment and warranty of title to transferee in the space provided therefor on the certificate . . . and cause the certificate and assignment to be mailed or delivered to the transferee or the Department." It is further provided that (with the exception contained in another section) "as between the parties, a transfer by an owner is not effective until the provisions of this section have been complied with." Miller admittedly did not comply with this section, but the court relying upon *Bankers Ins. Co. v. Griffin*[21] held that "as between the parties," Miller and Manning Conlin and Miller had transferred ownership, thus relieving State Farm of any liability.

The next in this series of cases was *Travelers Indem. Co. v. Dees*.[22] James M. Foxsworth was the named insured in an automobile liability policy issued by Travelers covering certain described automobiles as "owned" automobiles and providing liability coverage on non-owned automobiles, but only as "excess insurance over any other valid and collectable insurance," and with an exclusion from non-owned automobile coverage on the non-owned automobile while it was being used in a business or occupation of the insured, unless the non-owned automobile was a private passenger automobile operated by the named insured or certain other specified categories of persons. Samuel T. Dees, a used car dealer, was insured under a garage liability policy of South Carolina Insurance Company which covered all cars "owned" by Dees and further covered "any person while using, with permission of the named insured, an automobile to which the insurance applies . . . provided such person's actual operation . . . is within the scope of such permission," but which excluded from coverage as insured any person with respect to a car, possession of which the named insured had transferred pursuant to a sales agreement. While both policies were in effect,

19. The facts do not indicate any theory of permission unless the theory was that a permittee of a permittee of a permittee of a permittee of a permittee can grant permission, *i.e.*, permission came down the line from Miller to McGee.

20. S.C. CODE ANN. § 46-150.15 (1962).

21. 244 S.C. 552, 137 S.E.2d 785 (1964).

22. 235 F. Supp. 515 (E.D.S.C. 1964).

Foxsworth showed an interest in a 1960 Lincoln on Dees' lot and proposed trading his 1956 Cadillac for it. Dees made him a "trade-in difference" offer which Foxsworth declined, but Foxsworth showed such interest in the Lincoln that Dees let him take it over the weekend with the understanding that it would be bought or returned on the next Monday. Dees wrote this understanding on a bill of sale form, but no money passed between the parties and no price was agreed upon. While Foxsworth was using the car over the weekend on a trip to Myrtle Beach, South Carolina, he was involved in an accident injuring Eugene Covington and Katherine and Helen Crumpler, all of whom instituted suits against Foxsworth. Travelers brought this action joining as defendants Dees, the Crumplers, Covington, Foxsworth and the South Carolina Insurance Company, seeking a declaratory judgment of the rights of the parties. The court found that under *Bankers Ins. Co. v. Griffin*[23] the failure of Dees to comply with the title law was not determinitive of ownership between the parties but that the facts showed there had been no meeting of the minds on a contract of sale and therefore no change of ownership. Therefore, the exclusion of the South Carolina Insurance Company contract on automobiles transferred pursuant to sales agreement did not apply, and under the terms of the omnibus clause of its policy, coverage was furnished to Foxsworth as an insured, since he was driving an "owned" automobile with the permission of Dees. The court then determined that under its language covering non-owned automobiles Travelers was on the risk and the exclusion under such coverage was not applicable since the Lincoln was a private passenger automobile operated by Foxsworth. Such coverage by Travelers was, however, held to be under the terms of its contract excess coverage.

Clouse v. American Mut. Liab. Ins. Co.[24] was decided prior to *Hanna v. State Farm Mut. Auto. Ins. Co.*[25] and *Travelers Indem. Co. v. Dees*,[26] but it was appealed and the decision[27] was not handed down until March 25, 1965, after *Hanna* and *Dees* had been decided. On June 5, 1961, Prothro Chevrolet, Inc., owned a 1956 Oldsmobile which it had previously sold to one Woodrow

23. 244 S.C. 552, 137 S.E.2d 785 (1964).
24. 232 F. Supp. 1010 (E.D.S.C. 1964).
25. 233 F. Supp. 510 (E.D.S.C. 1964).
26. 235 F. Supp. 515 (E.D.S.C. 1964).
27. 344 F.2d 18 (4th Cir. 1965).

Way but which it had repossessed under a conditional sales contract. Prothro apparently had obtained the certificate of title from Way but had never had a replacement certificate of title issued showing it as owner. Freddie Munn wished to buy the car and made a down payment and executed a conditional sales contract for the balance. Prothro surrendered possession of the car to him. The procedure for a sale such as took place is set forth in the code:

> If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner within ten days after delivery to him of the vehicle, he need not send the certificate to the Department, but, upon transferring the vehicle to another person other than by the creation of a security interest, shall promptly execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided therefor on the certificate or as the Department prescribes, and mail or deliver the certificate to the Department with the transferee's application for a new certificate.[28]

Prothro executed and delivered an assignment and warranty of title to Munn along with state highway department form 402, a certificate of insurance form. Munn could not fill this out since he had no liability insurance. Prothro gave Munn an envelope addressed to the South Carolina Highway Department, and Munn was to mail in the various papers upon completing the 402 form. This he never did because two days later on June 7, 1961, Munn negligently collided with Lawrence Clouse. Clouse, joined by his employers workmen's compensation carrier which had paid him benefits, sued Munn and recovered a verdict. After a nulla bona return on an execution against Munn, Clouse and Employer's Mutual Liability Insurance Company of Wisconsin, the workmen's compensation carrier, instituted this suit against American Mutual Liability Insurance Company, the insurer of Prothro under a garage liability policy. The theory of the suit was that, since Prothro failed to comply with the title transfer provisions above quoted, Prothro was still the owner of the 1956

28. S.C. CODE ANN. § 46-150.16 (1962).

Oldsmobile and coverage was available under the omnibus clause of its garage liability policy which covered "any automobile owned by or in charge of the named insured" and defined "insured" as "any person while using an automobile covered by this policy . . . provided the actual use of the automobile . . . [was] . . . by the named insured or with its permission." Applying *Bankers Ins. Co. v. Griffin*[29] the district court found for the defendant, holding that Munn was the true owner of the 1956 Oldsmobile, which holding, of course, defeated coverage under the defendant's policy. On appeal the court of appeals reversed the decision. The basis for the reversal was stated:

> In its laws governing motor vehicle registration and licensing, South Carolina Code of Laws, title 46 (1962), South Carolina has clearly spelled out a public policy that motor vehicles are not to be operated upon its highways without liability insurance coverage or its equivalents for uninsured motorists. Administratively, the state refuses to register or transfer title to or to license the operation of a vehicle without proof of insurance or its statutory equivalents. Sections 46-17(3) and 46-137. Failure to comply with the statute is a misdemeanor. Section 46-11. We note parenthetically that we are not concerned with the alternatives to liability insurance in this case, sections 46-135 through 46-138.8, since it is conceded that neither Munn nor Prothro complied or attempted to comply with them.
>
> We turn then to the particular statutes involved in this case. Two sections deal with how voluntary transfers are carried out and when such transfers are effective. Section 46-150.15 provdies for those situations in which the transferror is the registered titleholder named in the certificate issued by the State Highway Department covering the subject automobile. In effect the section provides that the seller may either deliver the specified documents to his transferee who must thereupon mail or deliver them to the Department or the transferor may himself mail or deliver them to the Department. It further provides that except as between the parties, the transfer is not effective until the section has been complied with.
>
> The other section dealing with voluntary transfers, section 46-150.16 is the controlling provision in this case. It pro-

29. 244 S.C. 552, 137 S.E.2d 785 (1964).

> vides for those situations in which a registered dealer transfers a car of which he is not the registered titleholder. This section specifically provides that the *transferor himself* must mail or deliver the specified documents to the Department. Thus, in exchange for the privilege of holding the car in his stock for resale without having it titled in his own name, the responsibility is placed upon the dealer instead of the purchaser to see that the old certificate, together with any other necessary documents, is sent to the Department when the car is resold. In view of the fact that these papers must include a certification that the new applicant has liability insurance coverage or its equivalents before the Department will issue the new certificate of title, we are forced to the conclusion that the distinction between sections 46-150.15 and 46-150.16 is of legal significance in the state's program of insurance. It is an administrative device by which the state seeks to assure itself of continued liability coverage on a large number of secondhand cars sold throughout the state. We think section 46-150.16, when considered in conjunction with the other sections of the South Carolina Motor Vehicle Registration and Licensing Act and particularly section 46-150.15, indicates a legislative intent to hold the transfer ineffectual, certainly to the extent necessary to hold the insurance carrier liable under the circumstances of this case, unless there is compliance with its terms by the dealer-transferor. We think the failure of Prothro to comply with the statute left him with a responsibility for the operation of the car by Munn with his consent which is covered by the omnibus clause of his liability insurance policy.[30]

It appears to the writer that the court of appeals is in error. The finding of the court of appeals is that section 45-150.16 requires a dealer to send in to the highway department a certificate signed by the purchaser of a car to the effect that he has "liability insurance or its equivalents," since without such a certification the department will not issue a new certificate of title to the purchaser. Section 46-150.16 does not provide for such a certificate of insurance or equivalent; it requires that the dealer mail to the department "the transferee's application for a new certificate [of title]." The statutory provision[31] deal-

30. Clouse v. American Mut. Liab. Ins. Co., 344 F.2d 18, 19-20 (4th Cir. 1965).
31. S.C. CODE ANN. § 46-150 (1962).

ing with certificates of title and applications for such certificates contains no requirement that a vehicle have insurance or its equivalent before a certificate of title be issued on it. (Obviously one may wish title to a vehicle to prove ownership without any intention of operating the vehicle, e.g., to display it because of its historical interest, and therefore without any need for liability insurance on it.) Therefore, in the provision requiring the dealer to mail or deliver to the department the transferee's application for a new certificate of title, an application that does not require a showing of liability insurance or its equivalent, is not "of legal significance in the state's program of insurance." The court of appeals apparently fell into error by a misinterpretation of sections 46-17(3) and 46-137 of the South Carolina Code which the court quotes for the proposition that South Carolina will not transfer title to a vehicle without proof of insurance or its equivalents. Registration and licensing is required by section 46-11 of the South Carolina Code in order for a vehicle to be "driven, operated or moved upon a highway . . . ." Section 47-17(3) states generally what an application for registering and licensing shall contain and section 46-137 provides that every person applying for registration for a vehicle who declares that the vehicle is insured must furnish a certificate to that effect. These sections do not apply to certificates of title, only to registration and licensing. Section 46-14.1 merely makes with exceptions not applicable here a certificate of title a prerequisite to registering a vehicle.

D. Uninsured Motorist Coverage

The great number of cases decided during the survey period concerning uninsured motorist coverage reflect the confusion which still exists in this relatively new field, a confusion complicated by the 1963 amendments to the Uninsured Motorist Act.[32] These amendments, which became effective on June 14, 1963, changed the act in many basic particulars, so that several of the cases reviewed here which arose prior to the effective date of the amendments reached conclusions different from conclusions which would now be reached as a result of the amendments. Several of the cases which arose under uninsured endorsements

32. For an excellent brief resume of the legislative history and purpose of this act, see Southern Farm Bureau Cas. Co., v. Fulton, 244 S.C. 559, 137 S.E.2d 769 (1964).

are reviewed under other subtitles herein for reasons obvious to one reading other sections of this review.

In *North River Ins. Co. v. Gibson*[33] the question was whether a defendant in a tort suit insured by an insurer which subsequent to the accident which gave rise to the suit went into receivership was an uninsured motorist within the meaning of the act which at that time, prior to the 1963 Amendments, defined an "uninsured motor vehicle" as "a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance . . . or there is such insurance, but the insurance company writing it denies coverage thereunder."[34] The South Carolina Supreme Court interpreted the insolvency of the insurer as a denial of coverage and held that the "insured" of the insolvent insurer was an uninsured motorist, so that the plaintiff's insurer was liable on its uninsured motorist coverage. The court followed, in reaching this conclusion, *State Farm Mut. Auto. Ins. Co. v. Brower*,[35] a Virginia case, in which the Virginia court stated that a person in distress is denied help when one who hears his cries says nothing but walks away. The argument was made that section 46-750.31.3, the codification of a part of the 1963 amendments which became effective after this case arose, but before it reached the South Carolina Supreme Court, which amended the definition of "uninsured motor vehicle" to include the situation "where there was such insurance, but the insurance carrier who wrote the same is declared insolvent" amounted to a legislative declaration that the act prior to such amendment provided no such protection. The court acknowledged the principle that an amendment could be considered in a proper situation as an aid in arriving at the legislative intent of the statute amended, but pointed out that this principle was merely a rule of construction where ambiguity existed and there was no ambiguity here. The court pointed out that the amendment under consideration was a part of a general amendment, so that the argument of legislative intent did not carry the same weight as if the amendment had been an isolated independent amendment.[36] It is interesting to note that on August 2, 1963, almost a year prior to the *North River* case, the

33. 244 S.C. 393, 137 S.E.2d 264 (1964).

34. S.C. CODE ANN. § 46-750.11(3) (1962).

35. 204 Va. 887, 134 S.E.2d 277 (1964).

36. Compare this argument with the argument contained in Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964).

United States District Court, Eastern District of South Carolina in *Federal Ins. Co. v. Speight*[37] under the same factual situation reached the opposite result, holding that an insured whose insurer becomes insolvent after the accident date was not an uninsured motorist. The district court concluded that the enactment of the amendment showed a previous legislative intent not to include as an uninsured motorist one whose insurer had subsequently become insolvent, a situation corrected by the amendment. Both courts in dealing with the problem of interpreting legislative intent relied upon 50 American Jurisprudence, *Statutes*, Section 275, p. 261, but reached different conclusions.[38]

Hatchett v. Nationwide Mut. Ins. Co.[39] is of little interest in that the question there raised cannot arise under the uninsured motorist law in the future as a result of the 1963 amendments. The accident which gave rise to the suit occurred on May 4, 1962, when the plaintiff's automobile, insured by the defendant insurer under a policy containing an endorsement to cover damages to the insured caused by an uninsured motorist, was involved in an accident with one Kenneth Stone, an uninsured motorist. At that time the Uninsured Motorist Act contained no provisions requiring any notice by an insured that he was proceeding against an uninsured motorist,[40] the law merely providing that no policy should be issued unless it contained an endorsement protecting the insured, as defined in the act, against accidents caused by an uninsured motorist in the amounts of the statutory limit. Section 46-750.18 of the Code[41] reads "nor may anything be required of the insured except the establishment of legal liability, ..." To protect itself the defendant by its endorsement required the insured to make a report of the accident and at the time of instituting suit to mail a copy of the summons and complaint in the action taken by the insured against the uninsured motorist to it. The plaintiff on August 8, 1962, instituted suit against the uninsured motorist. For the first time, on September 24, 1962, the plaintiff notified the

37. 220 F. Supp. 90 (E.D.S.C. 1963).

38. It would appear arguable that to make an insurer pay the liability claim of its insured against an "uninsured" motorist who has not paid anything into the uninsured motorist fund out of which the insurer is reimbursed for payments to its insured amounts to depriving the insurer of property without due process or a taking without just compensation.

39. 244 S.C. 425, 137 S.E.2d 608 (1964).

40. This has been corrected by S.C. CODE ANN. § 46-750.33 (Supp. 1965), such section being a codification of a part of the 1963 amendments.

41. S.C. CODE ANN. § 46-750.18 (1962).

defendant insurer of the pending action and mailed a copy of the summons and complaint to the insurer, indicating that while Stone was in default, the plaintiff would not object if the defendant wished to intervene in its own name. The plaintiff refused to waive the default and allow the defendant to file an answer on behalf of Stone. Under these circumstances the defendant refused to take any action, and the plaintiff proceeded to obtain a default judgment and a nulla bona return against Stone. The plaintiff then instituted this action for the amount of the judgment. The defendant denied liability on the grounds that the plaintiff had failed to comply with the conditions of the uninsured motorist endorsement by failing to give the required notice. The plaintiff's position which was adopted by the trial judge was that the endorsement written as protection against uninsured motorists could require no more of the insured than the Uninsured Motorist Act, that is, the requirement of the establishment of legal liability alone. On appeal the South Carolina Supreme Court held that the statute providing that the insured could be required to do nothing more than establish legal liability, placed upon the insurer the burden of devising a means whereby it could appear and defend a tort action against an uninsured motorist, so that the defendant by inserting the notice provisions merely provided for a means whereby it could prior to default appear and defend, and such provisions were permissible, since they were not in conflict with the act.[42]

Vernon v. Harleysville Mut. Cas. Co.,[43] like the case previously reviewed is of little interest now since it arose under the Uninsured Motorist Act prior to the 1963 amendments. Under then section 46-750.14 of the Code[44] the prescribed uninsured motorist endorsement required the insurer to pay to the insured "all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle," not exceeding the specified amounts and minus a 200 dollars deductible amount for property damage. On the day of the accident in question, July 11, 1962, Thomas D. Johnson had in effect with American Security Insurance Company an insurance policy covering an automobile owned by him, which provided fifty dollars deductible collision coverage to the described

42. Apparently the defendant raised no question of due process.
43. 244 S.C. 152, 135 S.E.2d 841 (1964).
44. S.C. CODE ANN. § 46-750.14 (1962).

vehicle and also any non-owned automobile, subject to reservations, while being driven by him. On that day Charles Vernon, a used car dealer, had in effect a liability insurance policy to which an uninsured motorist endorsement was attached under which his insurer, Harleysville Mutual, undertook to pay damages to which the insured might be entitled as a result of injury to an insured automobile owned by the named insured caused by an uninsured motorist subject to a 200 dollars deductible provision. The endorsement further provided that the protection under such endorsement would be excess over any other valid and collectible insurance against such property damage. Johnson went to Vernon and took out for a trial run a 1960 Plymouth automobile owned by Vernon with a view toward purchasing it. While operating this automobile, Johnson was involved in an accident with one Morgan, an uninsured motorist, as a result of which the 1960 Plymouth was severely damaged. Vernon sued Johnson and Morgan but recovered a judgment against Morgan only for 1,543.00 dollars actual damages. Vernon then instituted this action against Harleysville and American seeking a declaratory judgment determining which of the two insurers was primarily responsible for paying his judgment. It was the position of Harleysville that its policy was excess over "any other valid and collectible insurance against such property damage" as provided in its policy and that the coverage afforded by American with its collision policy was "other valid and collectible insurance against such property damage." American relied upon a provision of its policy that where a collision was to a non-owned automobile the coverage provided by its policy "shall be excess insurance over any other valid and collectible insurance" available "against a loss covered by this policy." The trial court held American primarily liable less its fifty dollars deductible. On appeal the South Carolina Supreme Court reversed the trial court and held that the Uninsured Motorist Act at the time of the occurrence of the accident allowed no exclusion where there was other insurance available. Since no exclusion was contained in the statutes, Harleysville could not exclude from its coverage property damage covered by other insurance. The court pointed out that the act by the amendments effective June 14, 1963, allows such exclusion, and construed the amendments as being "a tacit declaration by the legislature that such damage could

not be excluded under the previous Act."[45] The court further held that American could not be liable since the provision of its collision policy outlined above was applicable only when an insured had another policy covering "a loss covered by this policy" and other such insurance was not present, since there were not two or more insurance policies covering the same interests, the same subject matter and against the same risk, *i.e.* there was not double collision coverage.[46]

Johnson v. Allstate Ins. Co.[47] arose out of a dispute between Allstate Insurance Company and Southern Farm Bureau Casualty Insurance Company as to which of the insurers was liable as a result of an accident in which plaintiff's intestate, a passenger in an automobile insured by Allstate, was killed due to the negligence of two truck drivers, driving trucks owned by one Livingston, who was insured on these trucks by Southern Farm Bureau Casualty Insurance Company. Previous to this action suit had been brought on behalf of the estate of the plaintiff's intestate against the drivers of the two trucks owned by Livingston and against Livingston. In this wrongful death action a judgment was obtained on behalf of the plaintiff's intestate against the truck drivers and Livingston. On a previous appeal,[48] however, the court of appeals held that the drivers of the trucks were not using them with Livingston's permission or as his agents and servants, so that the judgment in the tort action was reserved as to Livingston, leaving the plaintiff's intestate with a judgement against the truck drivers who were uninsured motorists. The plaintiff's intestate instituted this action by joining both insurers, since Allstate under its uninsured motorist endorsement appeared liable to the plaintiff's intestate to the extent of 10,000 dollars. Allstate, however, sought to compel Southern Farm to pick up its 10,000 dollar tab on the theory that Southern Farm, even though it defended the

45. *Compare* the argument of the court in this case to the effect that the amendmennt was a "Tacit declaration" that the law was not different before the amendment, *with* the argument of the court in the *North Bridge* case, considered above.

46. It is difficult to understand why American, which agreed "To pay for loss by collision to the owned or to a non-owned automobile" unless there was like coverage for the loss by another insurer (which the court held there was not), was not required to pay Vernon the two-hundred dollars deductible allowable under the uninsured motorist endorsement less its fifty dollars deductible.

47. 333 F.2d 698 (4th Cir. 1964).

48. 315 F.2d 429 (4th Cir 1963).

tort action under a reservation of rights, had waived its rights to deny coverage and was estopped to deny coverage, since it had proceeded to defend the tort action and had, with Allstate, contributed to the settlement of a companion case. The district court held that these facts standing alone showed no waiver or estoppel. By this per curiam decision the court of appeals agreed and affirmed the decision of the district court.

In *Davidson v. Eastern Fire & Cas. Ins. Co.*[49] the plaintiff sought recovery under an uninsured motorist endorsement attached by the defendant to the policy of one Bobby Dority. Dority was not driving the vehicle insured under Eastern's policy at the time of the collision, but rather was driving with permission the uninsured automobile of James Brabham when it was involved in an accident with the uninsured vehicle of Adam Stuckey. The plaintiff, a passenger in the vehicle driven by Dority, caught in the position of no apparent insurance coverage obtained a judgement against Stuckey and sought in this action to hold the defendant insurer liable. The lower court held the defendant liable, but on appeal the South Carolina Supreme Court reversed the case, pointing out that the South Carolina Code[50] defined "insured" as used in section 46-750.14, the section requiring the uninsured motorist endorsement, as,

> the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in such motor vehicle to which the policy applies or the personal representative of any of the above . . . .[51]

And, since the uninsured motorist coverage for a guest, as the plaintiff admittedly was, is limited to the situation where the motor vehicle designated in the policy was in use, there was no coverage available under the endorsement. The court summarily rejected the plaintiff's assertion that paragraph five of the defendant's policy extending benefits of liability coverage to use of other automobiles extended to the uninsured motorist coverage, stating:

49. 245 S.C. 472, 141 S.E.2d 135 (1965).
50. S.C. CODE ANN. § 46-750.11 (1962).
51. *Ibid.*

> The issue here is not whether the respondent is entitled to the benefit of the liability coverage of Dority's policy, but whether she is entitled, as an "insured" within the meaning of Section 46-750.11, to the benefit of the uninsured motorist coverage required of Eastern by Section 46-750.14.[52]

Pulliam v. Doe[53] was another of those cases which involved the problems caused by 1963 amendments. On June 2, 1963, Government Employees Insurance Company issued to the plaintiff its policy containing an uninsured motorist endorsement written to comply with the applicable section at that time which required uninsured motorist protection for accidents caused by unknown drivers, whether or not the injury to the plaintiff occurred through an impact between the vehicles involved. On June 13, 1963, the 1963 amendments became effective under which the uninsured motorist protection required to be given by statute was reduced by a provision[54] to the effect that one insured under such an endorsement could not sue and recover damages from an unknown motorist unless there was a physical contact with the vehicle of such unknown motorist. On September 28, 1963, plaintiff was injured as a result of a no-contact accident with an unknown motorist and brought suit. The insurer demurred asserting that the complaint alleged no physical contact and under the amended statute such was required. The lower court sustained the demurrer, but the South Carolina Supreme Court held that the amended statute could not affect a contract right which accrued prior to the amendment, the endorsement as previously written being a vested contract right.

E. Certified and Voluntary Automobile Policies

Several cases decided during the survey period reflect that confusion still exists concerning the distinction between "certified" and "voluntary" automobile liability policies. Our Motor Vehicle Safety Responsibility Act[55] as passed in 1952 is of the "one bite" variety, *i.e.*, it contains no requirement that one have automobile liability insurance until after he has been involved in an accident while uninsured and without a statutory substi-

52. Davidson v. Eastern Fire & Cas. Ins. Co., 245 S.C. 472, 478, 141 S.E.2d 135, 138 (1965).

53. 246 S.C. 106, 142 S.E.2d 861 (1965).

54. This provision is now codified as S.C. CODE ANN. § 46-750.34 (Supp. 1965).

55. S.C. ACTS & J. RES. 1952, p. 1853.

tute for insurance. After such an accident, however, one is required to have a "motor vehicle liability policy," a policy certified by the insurer to meet the "future proof" provisions of the act. Such a policy must meet various requirements not required in a voluntary policy.[56] In a series of cases[57] decided prior to the Uninsured Motorist Act of 1959[58] which amended the Motor Vehicle Safety Responsibility Act, the elucidating light of litigation had made these distinctions clear, but the 1959 amendments have restored confusion.

In *American Liberty Ins. Co. v. DeWitte*[59] the question arose whether a household exclusion in American Liberty's policy voluntarily issued to S. D. DeWitte by American Liberty was valid. One Bobby DeWitte was injured allegedly through the negligence of his father, the insured, in the maintenance or use[60] of the insured automobile and instituted suit against his father. American Liberty then instituted this suit seeking a determination that it was not on the risk in view of an exclusion in its policy which excluded from the benefits of the liability provision the spouse, parent, son, or daughter of the insured. The insured and his son took the position that, while prior to the 1959 amendments an insurer could contract as he pleased respecting coverage, the 1959 amendments[61] destroyed the distinctions

56. These requirements are now set forth in S.C. CODE ANN. § 46-702(7) (Supp. 1965).

57. State Farm Mut. Auto. Ins. Co. v. Cooper, 233 F.2d 500 (4th Cir. 1956); Barkley v. International Mut. Ins. Co., 227 S.C. 38, 86 S.E.2d 603 (1955).

58. S.C. ACTS & J. RES. 1959, p. 585.

59. 236 F. Supp. 636 (E.D.S.C. 1964).

60. The facts given in the opinion merely indicate that the son was injured as the result of a fire which occurred while he was looking under the car's hood.

61. S.C. CODE ANN. § 46-750.13 (1962) (since amended) read as follows:
No policy or contract of bodily injury liability insurance or of property damage liability insurance covering liability arising from the ownership, maintenance or use of any motor vehicle shall be issued or delivered in this State to the owner of such vehicle, or shall be issued or delivered by any insurer licensed in this State upon any motor vehicle then principally garaged or principally used in this State, unless it contains a provision insuring the person named therein and any other person, as insured, using any of those motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicles within the United States or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows: Ten thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to such limit for one person, twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident and five thousand dollars because of injury to or destruction of property of others in any one accident.

previously existing between voluntary and certified policies. The defendants claimed in effect that section 46-750.13 created a statutory omnibus clause (which gave the father, the insured, protection by its terms) out of which the insurer could not contract by adding the exclusion for household members. The court rejected this argument and held that section 46-750.13 applied only to a "motor vehicle liability policy," *i.e.*, a certified policy filed to satisfy the future proof provisions of the act, not to a voluntary policy such as American wrote. It therefore held there was no coverage for the son, he being validly excluded.

Sections 46-750.13 and 46-750.14 appear in Article 5 of the Motor Vehicle Safety Responsibility Act, subtitled "Motor Vehicle Liability Policies." Since a motor vehicle liability policy is defined by section 46-702 as one certified as future proof, it would appear at first glance that sections 46-750.13 and 46-750.14 must relate to "motor vehicle liability policies," *i.e.*, certified policies, and the court construing section 46-750.13 so held in the *DeWitte* case.

However, in *Southern Farm Bureau Cas. Co. v. Fulton*[62] the South Carolina Supreme Court construing section 46-750.14 held that this section applied to policies voluntarily issued. Since section 46-750.14 incorporates by reference section 46-750.13 it is difficult to reconcile the decisions. In the *Fulton* case the plaintiff insurer brought an action seeking a declaratory judgment to the effect that the uninsured motorist endorsement attached to its policy issued to Melvin Fulton did not afford coverage to the wife of the named insured, Mrs. Maggie Fulton, who was killed on January 26, 1963, while riding as a passenger in the automobile of an uninsured motorist. The endorsement defined the word "insured" so as to exclude from its coverage Mrs. Fulton, the wife of the named insured. However, the administrator

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S.C. CODE ANN. § 46-750.14 (1962) (since amended) read as follows:

> Nor shall any such policy or contract be so issued or delivered as described in § 46-750.13 unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of § 46-750.13. Such endorsement or provisions shall also provide for no less than five thousand dollars coverage for injury to or destruction of the property of the insured in any one accident, but may provide an exclusion of the first two hundred dollars of such loss or damage. No additional charge shall be made to the policyholder for such endorsement. Recovery under the endorsement or provisions shall be subject to the conditions set forth in §§ 46-750.15 to -750.18.

62. 244 S.C. 559, 137 S.E.2d 769 (1964).

of Mrs. Fulton's estate, the defendant, took the position that the Uninsured Motorist Act required Southern Farm to include as an "insured" Mrs. Fulton. Section 46-750.14 provided that any automobile liability insurance policy issued must contain an endorsement undertaking to pay "the insured" all damages within specified limits which he should be entitled to recover as damages from an uninsured motorist, and section 46-750.11 defined "insured" as including "while resident of the same household the spouse of any such named insured." It was admitted that Mrs. Fulton was the spouse of the named insured and a resident of the household, and so within the apparent coverage of the Uninsured Motorist Act. However, the insurer took the position that these statutory omnibus provisions under the Uninsured Motorist Act applied only to a policy certified as proof of financial responsibility for the future under the Code,[63] and, since the policy was not so certified, it could contract with its insured free of the compulsion imposed by the code sections above mentioned. The court rejected this argument and found a legislative intent to make all policies, including those voluntarily obtained, carry involuntarily an uninsured motorist provision complying with all of the provisions of the Uninsured Motorist Act. The court held that the statutory requirements were to be read into the uninsured motorist endorsement just as though they had been printed in the endorsement.

It is believed that the legislature intended by the Uninsured Motorist Act to recognize two terms of art, a "motor vehicle liability insurance policy," *i.e.*, a certified policy, and a "bodily injury or property damage liability policy," *i.e.*, voluntary policy. This appears to be recognized by section 46-702 which defines an "insured motor vehicle" as one on which there is bodily injury liability insurance and property damage liability insurance in the specified amounts, not as one on which there is a "motor vehicle liability policy."[64]

In *Toole v. Nationwide Mut. Ins. Co.*,[65] the voluntary versus certified policy problem came up in connection with a cancellation. The plaintiff had obtained a judgment against one James Rogers, but Nationwide, the insurer of Rogers, claimed it had cancelled its policy prior to the date of the accident. The insurer

63. S.C. CODE ANN. §§ 46-747 to -748 (1962).

64. This surveyor takes caveat as to the effect of the 1963 amendments to sections 46-750.13 and 46-750.14 on the theories here advanced.

65. 238 F. Supp. 125 (E.D.S.C. 1965).

had not complied with the code[66] provisions concerning how a certified policy could be cancelled. However, the policy involved was a voluntary one and the court held these code provisions did not apply. The argument was then made that section 46-138 which applies to voluntary policies had not been complied with. This section read:

> Upon the termination of insurance by cancellation or failure to renew, notice of such cancellation or other termination shall be filed by the insurer with the Department not later than five days following the effective date of such cancellation or other termination.[67]

The court ruled that the effectiveness of the cancellation did not depend upon notice to the state highway department, since the statute on its face recognized that there could be a cancellation prior to notice being given the state highway department. The purpose of such notice is to alert the department to revoke the certificate of registration and license plates unless the owner gives evidence of other insurance or contributes to the uninsured motorist fund.

F. Miscellaneous Automobile Insurance Cases

In *Myers v. Calvert Fire Ins. Co.*[68] it was held that damage to a car caused by rising tide was within the coverage afforded by the defendant's policy language covering loss "caused by flood or rising waters." *Carroway v. Johnson*[69] merely laid to rest any doubts which *Laird v. Nationwide Ins. Co.*[70] may have raised concerning the liability of automobile insurers for punitive damages assessed against their insureds, holding that the obligation of the insurer to pay "all sums" includes within the word "sums" punitive damages.

Lewis v. Continental Ins. Co.[71] held that the plaintiff who had obtained a judgment in an in rem proceeding against a vehicle owned by one Hollie Robinson, who was insured by the defendant, was not entitled to recover in this proceeding brought in an

66. S.C. Code Ann. §§ 46-750.5, 46-750.26 (1962).
67. S.C. Code Ann. § 46-138 (1962).
68. 246 S.C. 46, 142 S.E.2d 704 (1965).
69. 245 S.C. 200, 139 S.E.2d 908 (1965).
70. 243 S.C. 388, 134 S.E.2d 206 (1964).
71. 239 F. Supp. 42 (E.D.S.C. 1965).

attempt to collect on such in rem judgment. The court reasoned that the policy imposed on the defendant the duty to pay only such sums as the insured was "legally obligated to pay" and the insured was under no legal obligation to pay the in rem judgment, and for the further reason that another policy provision made it a condition precedent to a suit against the insurer that "the amount of the insured's obligation to pay shall have been finally determined either by judgment . . . or by written agreement of the insured, the claimant, and the company," and no such judgment against the insured or agreement existed.

Lyles v. Nationwide Mut. Ins. Co.[72] arose under the "duty to defend" clause of the defendant's policy which it had issued to the plaintiff. The plaintiff, while driving a vehicle other than the insured vehicle, was involved in an accident with one Kibler. Kibler sued the plaintiff, and the plaintiff looked to defendant for protection and defense, both of which defendant denied on the grounds that its policy afforded no coverage. The plaintiff obtained his own attorney to defend Kibler's action. Kibler obtained a judgment against the plaintiff here, and the plaintiff then brought this action seeking to recover from the defendant attorney's fees he had paid his attorney for defending the suit brought by Kibler. The question of whether the defendant afforded coverage for the judgment against the plaintiff was not in issue, but the trial judge held that the language of the policy wherein the defendant undertook to defend the plaintiff against any suit against a person entitled to protection alleging bodily injury or property damage liability even if such suit was groundless, imposed upon the defendant the duty to defend the action regardless of whether coverage existed. On appeal the South Carolina Supreme Court reversed the lower court, holding that such a defense clause imposes no obligation on an insurer when the claim upon which the action was based is found to be not within the coverage afforded.

Beasley v. Allstate Ins. Co.[73] involved an interpretation of a simple omnibus clause under a non-owner's automobile liability policy. The omnibus clause on the policy issued by the defendant to one Dannell Tolson was as follows:

> With respect to the insurance for Bodily Injury Liability and for Property Damage Liability the unqualified word

72. 245 S.C. 438, 141 S.E.2d 106 (1965).
73. 246 S.C. 153, 142 S.E.2d 872 (1965).

> 'insured' includes (a) such named insured and spouse and (b) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization.[74]

Tolson, the insured, was killed through the negligence of one Wilkes who was driving Tolson's father car with Tolson as a guest passenger. Tolson's administrator, the plaintiff, after obtaining a judgment against Wilkes, brought this action to recover on the judgment, seeking to force Wilkes into the definition of an insured under the above omnibus clause. There was no evidence in the record of the use being made of the car or the circumstances surrounding the use, so the court was forced to conclude that while Wilkes was "legally responsible" himself, he was not "legally responsible for the use by such named insured [Tolson] or spouse," so there was no coverage. The court by dicta indicated that had Wilkes been Tolson's agent, he would have been "legally responsible for the use by such named insured" and coverage would have been available.

In *Sheffield v. American Indem. Co.*[75] one Herman Boyd Shealy, an uninsured motorist, negligently struck a car owned by the plaintiff Shelly Sheffield, driven by Gloria Sheffield, the wife of Shelly Sheffield. Gloria Sheffield and Shelly Sheffield instituted suits against Shealy, Mrs. Sheffield's suit being for personal injuries and Mr. Sheffield's suit being only for loss of consortium of his wife, Gloria, and for her medical expenses, since he was not a passenger in the car at the time. The defendant, the automobile liability insurer of Shelly Sheffield, answered in both cases for the uninsured motorist, and actively participated in the defense of the Gloria Sheffield case, the first of the two cases to be tried, which resulted in a verdict of 30,000 dollars actual and 500 dollars punitive damages for Gloria Sheffield. The defendant paid Gloria Sheffield 10,000 dollars, the limits for one person, and took no steps to defend the case of Shelly Sheffield when it later came to trial. Shelly Sheffield obtained a judgment of 15,000 dollars against Shealy, the uninsured motorist. The judgment being uncollectable, Shelly Sheffield instituted this suit against American Indemnity under the uninsured motorist endorsement attached to his policy. The plaintiff's theory was that the endorsement which followed the

74. *Id.* at 156, 142 S.E.2d at 873.
75. 245 S.C. 389, 140 S.E.2d 787 (1965).

terms of the statute[76] in providing limits for "bodily injury $10,000.00 each person; $20,000 each accident" entitled him to 10,000 dollars of the 15,000 dollars judgment he had obtained in addition to the 10,000 dollars his wife had been paid, *i.e.*, that there were two bodily injuries. The uninsured motorist endorsement on the policy in question included Mr. Sheffield as an insured by defining "insured" as "any person, with respect to damages he is entitled to recover for care or loss of services because of bodily injury to which this endorsement applies." The endorsement further provided that "the insurance applies separately with respect to each insured under this endorsement, but neither this provision nor application of this insurance to more than one insured shall operate to increase the limits of the company's liability." The endorsement also contained the following:

> The limit of bodily injury liability stated in the schedule as applicable to 'each person' is the limit of the company's liability for all damages, including damages for care or loss of services because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of such liability stated in the schedule as applicable to 'each accident' is the total limit of the company's liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons as the result of any one accident.[77]

The lower court ruled against the plaintiff and he appealed. The South Carolina Supreme Court reviewed numerous cases applying similar policy provisions and concluded that the consequential damages of the plaintiff flowed from the same "bodily injury" sustained by the wife and that there was only 10,000 dollars available for one bodily injury, which amount the wife had already received, so her husband, the plaintiff, was entitled to nothing.[78] The court distinguished *Sossman v. Nationwide Mut. Ins. Co.*,[79] in which the phrase construed was "personal

76. S.C. CODE ANN. § 46-750.14 (1962).

77. Sheffield v. American Indem. Co., 245 S.C. 389, 393, 140 S.E.2d 787, 789 (1965).

78. Of course, had the wife received less than ten thousand dollars, the plaintiff would have been entitled to the difference between what she had received and ten thousand dollars.

79. 243 S.C. 552, 135 S.E.2d 87 (1964).

injuries," the court having held there that a husband suffered one personal injury in the loss of consortium and his wife suffered another when she was negligently injured.

Three other cases[80] touching upon the field of automobile insurance were decided by the South Carolina Supreme Court during the survey period, but they are not reviewed here, since they are of little interest from an insurance standpoint.

G. Double Insurance—Proration Under Fire Policy

Two cases dealing with fire insurance decided during the survey period are of interest in showing a trend toward a division of thought in the court regarding the interpretation of the code section which provides:

> No company writing fire insurance policies, doing business in this State, shall issue a policy for more than the value stated in the policy or the value of the property to be insured, the amount of insurance to be fixed by the insurer and insured at or before the time of issuing the policy. In case of total loss by fire the insured shall be entitled to recover the full amount of insurance, and in case of a partial loss the insured shall be entitled to recover the actual amount of the loss, but in no event more than the amount of the insurance stated in the contract. But if two or more policies are written upon the same property, they shall be deemed and held to to be contributive insurance, and if the aggregate sum of all such insurance exceeds the insurable value of the property, as agreed by the insurer and the insured, each company shall, in the event of a total or partial loss, be liable for its prorata share of insurance. Nothing in this section shall be held to apply to insurance on chattels or personal property.[81]

Thomas v. Penn Mut. Fire Ins. Co.[82] was the first of these cases. In 1959 George W. Thomas, J. Lever Chambers and Lula Viola Chambers entered into a contract called a "Bond for Title" under the terms of which Thomas agreed to convey a dwelling house to the Chambers upon the payment to him of a certain sum in monthly installments. The Chambers moved into the dwelling house under this contract and lived there until it burned on Feb-

80. Teasly v. Lowe, 245 S.C. 271, 140 S.E.2d 171 (1965); Cooper v. Georgia Cas. Co., 244 S.C. 286, 135 S.E.2d 774 (1964); Smith v. Ramsey, 244 S.C. 168, 135 S.E.2d 849 (1964).

81. S.C. CODE ANN. § 37-154 (1962).

82. 244 S.C. 581, 137 S.E.2d 856 (1964).

ruary 23, 1962. Whether the relationship between Thomas and Chambers was characterized as vendor-vendee or mortgagee-mortgagor, it was undisputed that each had an insurable interest in the dwelling house. On January 16, 1962, the Chambers took out a policy on the house, evaluated in the policy at 4,000 dollars, with Atlantic Casualty and Fire Insurance Company (hereinafter referred to as Atlantic). This policy named the Chambers as insured, but undertook to protect Thomas as mortgagee "as interest may appear." On January 20, 1962, Thomas took out a policy on the same house evaluated in the policy at 5,000 dollars with appellant Penn Mutual Fire Insurance Company (hereinafter referred to as Penn). This policy named James Lever Chambers or George W. Thomas as insured "as their interest may appear." Thus both policies undertook to insure the Thomas and Chambers' interests in essentially the same words "as interest may appear." Upon the burning of the house, Atlantic and Penn took the position that both policies insured the same interests, and, therefore, they were entitled to prorate the loss on a contributive basis under the provisions of section 37-154, above set forth. In cases consolidated for trial Thomas sued Penn for 5,000 dollars, the evaluation on the Penn policy and the Chambers sued Atlantic for 4,000 dollars, the evaluation on the Atlantic policy. Judgments were obtained in these amounts, the master to whom these cases had been referred, even though they were law cases, and the county court concurring in finding as a fact that Thomas had intended to cover only his interest, and the Chambers had intended to cover only their interest. On appeal the South Carolina Supreme Court pointed out that both Thomas and the Chambers had separate insurable interests, and that while section 37-154 provided for contribution when two or more policies are "written upon the same property," such section should be read construing "property" as "interest," and here Thomas had insured one interest, his own, and the Chambers had insured another, their own, so that they were entitled to recover for their respective interests from their respective insurers without proration. Mr. Justice Brailsford in a separate opinion concurred only because he felt bound by the concurrent finding of the master and the county court that it was "intended" by Thomas and the Chambers to insure separate interests. He pointed out that, if he were free to interpret the policies, his conclusion would be different, but in view of the fact that the record on appeal contained no testimony, he could not go behind the findings below.

In *Johnson v. Fidelity & Guar. Ins. Co.*,[83] essentially the same question presented in the *Thomas* case[84] was before the court. In September of 1960, Johnson, the plaintiff, bought a shell home from Shell Homes, Inc. on an installment contract basis, giving Shell Homes, Inc. a note and a mortgage on the home for 3,270 dollars. On October 3, 1960, Shell Homes, Inc. secured a policy, the price of which was included in Johnson's payments, from Atlantic Casualty and Fire Company in the amount of 3,500 dollars, naming Johnson as insured with a loss payable clause to Shell Homes, Inc., such clause presumably reading "as interest may appear." Johnson, after spending several thousand dollars in completing the house including 500 dollars borrowed from Anderson Brothers Bank, on October 4, 1961, obtained a policy with the defendant insurer in the amount of 4,000 dollars naming himself as insured with a loss payable clause to the bank, such clause presumably reading "as interest may appear." On December 26, 1961, the home was completely destroyed by fire. The defendant insurer refused payment, and the plaintiff instituted this action. The trial judge, after hearing the testimony, ruled that the case presented only an issue of law and dismissed the jury. He then ruled for the plaintiff, holding that Johnson insured only his interest, and Shell Homes, Inc. had insured only its interest, so that the defendant insurer was liable for 4,000 dollars, not a pro rata share. On appeal the South Carolina Supreme Court affirmed the lower court on the same theory advanced by it in upholding the *Thomas* case. Mr. Justice Brailsford dissented on the same grounds he had used for his reservations in the *Thomas* case. He pointed out that here, unlike the situation in *Thomas*, there was no testimony justifying the finding of the trial court that Johnson and Shell Homes, Inc. intended only to cover their respective interests, but rather the policies spoke for themselves and showed that Johnson was the insured under both policies and had the same interest under both policies. He further pointed out that under the theory of the majority opinion holding that Johnson had no interest in the policy obtained by Shell Homes, Inc., had the house burned prior to Johnson's obtaining the policy with the defendant, Johnson would have been entitled to nothing for his lost equity, *i.e.*, the excess over the amount necessary to satisfy the note and mortgage given by him to Shell Homes, Inc. would not have

83. 245 S.C. 205, 140 S.E.2d 153 (1965).
84. Thomas v. Penn Mut. Fire Ins. Co., 244 S.C. 581, 137 S.E.2d 856 (1964).

come to Johnson under the Atlantic policy even though he had advanced the money to Shell Homes, Inc. for the premiums on this policy. Mr. Justice Bussey concurred in the result of the majority opinion without a decision so the nature of his reservation is unknown, but inasmuch as the majority opinion stated that the evidence supported the trial judge's finding that the parties "intended" to insure only their separate interests whereas Mr. Justice Brailsford stated that the evidence did not support such a finding, it is surmised that Mr. Justice Bussey agreed with the principle of the dissent but felt the testimony supported the trial judge's finding of intent. It is difficult to see how the trial court in either the *Thomas* or the *Johnson* case made the findings of "intent" in view of the parol evidence rule.

H. Miscellaneous Insurance Cases

Parnell v. United Am. Ins. Co.[85] was another of those cases where the plaintiff signed an application for health and accident insurance indicating a good health history whereas in fact she was in very poor health. Upon the defendant insurer learning the truth it attempted an informal recission by a refund of premium, but the plaintiff refused this and instituted this action for fraud and deceit, alleging that she had told the agent the truth but he had falsified the application unknown to her, she having signed it without reading it. In affirming a judgment n. o. v. granted by the trial court after a verdict in favor of the plaintiff for actual and punitive damages, the South Carolina Supreme Court distinguished this case from other apparently similar cases where verdicts were allowed to stand, on the grounds that plaintiff was intelligent, literate, and had not known the agent prior to meeting him at the time he gave his sales' pitch, *i.e.*, she had no right to rely upon the agent.

In *Hudson v. Reserve Life Ins. Co.*[86] the plaintiff who had taken out a health and accident policy in the defendant company in 1954, which policy was still in force on April 10, 1961, when a loss occurred, sought to have section 37-474 of the code[87] which limited the right of insurers to raise the defense of misstatements in insurance applications, read into his policy even though such section was passed in 1956, after his policy was issued. The theory was that the section provided that health and accident policies

85. 246 S.C. 26, 142 S.E.2d 204 (1965).
86. 245 S.C. 615, 141 S.E.2d 926 (1965).
87. S.C. CODE ANN. § 37-474 (1962).

issued thereafter must include the sought limitation, and, since his policy was renewable annually, each annual renewal was a new policy, so that from the date of the first renewal after the effective date of the act, the sought limitation was present in his policy. The South Carolina Supreme Court, affirming the lower court opinion holding for the defendant, indicated that the plaintiff's theory would be correct, if each renewal premium created a new contract, but that the policy language indicated no such intention. The court pointed out that the policy provided for waiting periods of up to six months before it became effective, which under the plaintiff's theory would mean that, as to an illness covered by the waiting period, an insured would be without coverage one half the time. Considering the contract language as a whole, the court held that it evidenced one contract issued in 1954 still in effect, not a series of one-year contracts.

In construing the requirement of the insuring agreement to collect double indemnity that death "occurred in consequence of bodily injury effected solely through external, violent, and accidental means, of which . . . there is a visible contusion or wound on the exterior of the body, . . . as a direct result thereof, independently of other causes," the South Carolina Supreme Court in *Hill v. Woodmen of the World Life Ins. Soc'y*[88] held that the testimony of witnesses as to the appearance of the deceased after a heart attack (flushed) and after death (cyanotonic, *i.e.*, a bluish tint to the skin) did not meet the requirement that there be a "visible contusion or wound on the exterior of the body." The court was careful to confine its ruling to the particular policy language involved, indicating that its decision might have been different, if the language had required merely "visible sign of injury" as some suicide clauses read.

In *Elrod v. Prudence Mut. Cas. Co.*[89] the court was called upon to construe the following policy provision by the plaintiff, the wife of the deceased insured:

> Any indemnity payable for loss of life benefits as provided for in Part III shall be doubled if such Loss of Life is sustained by the Insured while riding or driving in a private automobile of the pleasure car design, which is involved in an accident or if such Loss of Life is sustained by the Insured being struck by an automobile, truck, taxi cab or bus.[90]

88. 246 S.C. 133, 142 S.E.2d 869 (1965).
89. 246 S.C. 129, 142 S.E.2d 857 (1965).
90. *Id.* at 131, 142 S.E.2d at 857.

The pickup truck which the insured was driving was struck by a car and the insured was killed. The car did not strike the person of the insured. The South Carolina Supreme Court, in affirming the lower court's verdict in favor of double indemnity held the insured was "struck by" the automobile which collided with his pickup truck within the policy provisions even though it did not actually touch his body. Apparently the argument was not made that the "struck by" clause applied only while the insured was a pedestrian, which argument, if adopted, would have left the plaintiff without double indemnity, since a pickup truck is not "a private automobile of the pleasure car design."

In *Owens v. Durham Life Ins. Co.*[91] the court acknowledged the presumption against suicide as a presumption of law rather than fact and after stating that the plaintiff, the wife and beneficiary of the deceased, made out a prima facie case for the insurance proceeds once she proved the policy terms, coverage, and her husband's death, and after stating the burden was on the insurer to establish its defense of suicide, held that the facts overcame the presumption and the prima facie case and ruled in favor of the defendant insurer. On the day of the deceased's death he, while on a drinking spree, although he may have been temporarily not drunk, bought a pistol, threatened suicide, and was found alone in his home dead from a shot inflicted by the pistol.

Burgess v. Life Ins. Co. of Va.[92] was a suit on a life insurance policy but it announced no principle of insurance law, only holding that in a suit for policy proceeds where the claimant asserted the premium had been paid and the defendant asserted it had not, a jury issue was made.

Calhoun Life Ins. Co. v. Gambrell[93] is properly reviewable as an administrative law rather than an insurance case. Even though there was no statutory authority giving the insurance commission authority to regulate credit life insurance rates or credit health and accident rates, the commission on February 3, 1964, filed regulations controlling the rates on such insurance and the allowable commissions for the writing of such insurance. The plaintiff engaged in writing such insurance brought this action to enjoin the enforcement of the regulations. The lower court held, and the South Carolina Supreme Court affirmed such

91. 240 F. Supp. 294 (E.D.S.C. 1965).
92. 245 S.C. 48, 138 S.E.2d 640 (1964).
93. 245 S.C. 406, 140 S.E.2d 774 (1965).

holding, that the insurance commission as an administrative agency unknown to common law, had only such powers as were delegated to it by the general assembly, all legislative powers of the state of South Carolina being in that body under the South Carolina Constitution, and the statutes reveal no delegation of the power to control the rules and commissions in question. The argument of the commission that section 8-774 of the code[94] providing that all insurance sold under the provisions of the Small Loan Act, of which such section is a part, must "bear a reasonable and bona fide relation to the existing hazard or risk of loss" gave it the necessary regulatory powers was overruled, the court pointing out that the state board of bank control is primarily charged with the administration of the Small Loan Act, and further that such section only meant that a lender under the act could not require insurance having no relation to either the risk of the lender in making the loan or any risk to the security for the loan. The further argument of the commission that various code sections giving it the right to regulate the financial affairs of companies to protect their soundness gave it the right to make the regulations was dismissed by the observation that none of these sections by "necessary implication" authorized the regulations. Finally the commission asserted that the plaintiff should be denied equitable relief, *i.e.*, the sought injunction, on the grounds of unclean hands in that the plaintiff was violating various provisions of the South Carolina Code relating to insurance. The court pointed out that, if the commission was correct, it had recourse to various provisions of the code to prevent such abuses.

Tedder v. Hartford Fire Ins. Co.[95] involved the interpretation of the following clause in the fire insurance policy issued to the plaintiff by the defendant:

> It shall be optional with this company to take all or any part of the property at the agreed or appraised value and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on given notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.[96]

Upon a total loss and the timely filing of a proof of loss in the amount of the agreed value under the policy, the defendant

94. S.C. CODE ANN. § 8-774 (1962).
95. 246 S.C. 163, 143 S.E.2d 122 (1965).
96. *Id.* at 164, 143 S.E.2d at 122.

sought to exercise its election under the quoted provision to rebuild. The plaintiff refused to allow this and instituted this action for the agreed value. The case went to the jury only on the question of whether the defendant had complied with its policy provision by making a good faith attempt to replace the house within a reasonable time, which question the jury answered negatively in finding for the plaintiff. On appeal the only question presented was whether the evidence sustained this jury finding. The court held that the evidence did not justify the jury so finding, but went on to apply Rule 4, Section 8 of its Rules allowing the court to sustain a ruling on any grounds appearing in the record and concluded that on the basis of section 37-154 of the code[97] the decision below for the wrong reason reached the correct result. Such section provides:

> No company writing fire insurance policies doing business in this State, shall issue a policy for more than the value stated in the policy or the value of the property to be insured, the amount of insurance to be fixed by the insurer and insured at or before the time of issuing the policy. In case of total loss by fire the insured shall be entitled to recover the full amount of insurance, and in case of a partial loss the insured shall be entitled to recover the actual amount of the loss, but in no event more than the amount of the insurance stated in the contract.

The court concluded that the rebuilding provision was contrary to the plain wording of the statute that the insured "shall be entitled to recover the full amount of the insurance," and was therefore void.

Three other cases[98] decided during the survey period touched upon insurance principles, but are not here considered, since they are more properly reviewable in other areas of this survey.

I. Legislative Enactments

From an insurance viewpoint the first year of the 1964-65 session of the General Assembly of South Carolina, the period falling within the survey, was a quiet one. Only two acts of relative unimportance, at least from the viewpoint of the practicing at-

97. S.C. CODE ANN. § 37-154 (1962).

98. Cook v. Canal Ins. Co., 245 S.C. 238, 140 S.E.2d 166 (1965); Philco Fin. Corp. v. Mehlman, 245 S.C. 139, 139 S.E.2d 475 (1964); United States Fid. & Guar. Co. v. First Nat'l Bank, 244 S.C. 436, 137 S.E.2d 582 (1964).

torney, were passed: Act No. 910,[99] amending the Standard Nonforfeiture Law, sections 37-171 to -175.7 South Carolina Code and Act No. 1001,[100] amending the Unfair Practices Law, sections 37-1201 to -1223 South Carolina Code.

99. S.C. ACTS & J. RES. 1964, p. 2139.
100. S.C. ACTS & J. RES. 1964, p. 2293.