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Insurance Law

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INSURANCE LAW

I. INNOCENT CO-INSURED MAY RECOVER INSURANCE PROCEEDS FOR DAMAGES RESULTING FROM ARSON

The South Carolina Supreme Court in *McCracken v. Government Employees Insurance Co.*[1] held that, absent contrary statutory or specific policy language, an innocent co-insured may recover his or her share of homeowner's policy insurance proceeds even if another co-insured burns the insured property.[2] This holding places South Carolina among the growing majority of jurisdictions that allow recovery by an innocent co-insured.[3]

In *McCracken* Government Employees Insurance Company issued a homeowner's policy to Mr. and Mrs. McCracken.[4] The McCrackens held the insured property under a joint tenancy. A federal jury found that appellant, Charles McCracken, purposely set the fire that destroyed the insured property and, at the same time, found Carol McCracken innocent of any wrongdoing.

The Fourth Circuit Court of Appeals affirmed the judgment on all points, but remanded the case to the district court for a determination of whether Carol McCracken, as an "innocent spouse," was entitled under South Carolina law to recover her portion of the insurance proceeds.[5] The district court, pursuant to South Carolina Supreme Court Rule 46,[6] certified the ques-

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1. 284 S.C. 66, 325 S.E.2d 62 (1985).

2. *Id.* at 69, 325 S.E.2d at 64.

3. *See* McCann & Hall, *Innocent Spouse Doctrine-New Fire in an Old Issue*, 51 INS. COUNS. J. 86, 98 (1984).

4. Brief of Respondent at 4. The policy was issued in the names of both Mr. and Mrs. McCracken. Respondents argue that such a " 'joint contract' [created] rights and obligations in the 'insureds' as a unit, not the insureds separately." *Id.* at 10.

5. McCracken v. Government Employees Ins. Co., 718 F.2d 1091 (4th Cir. 1983).

6. S.C. SUP. CT. R. 46, § 1 states in pertinent part:

> The Supreme Court in its discretion may answer questions of law certified to it by any federal court of the United States . . . when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending . . . as to which it appears . . . there is no controlling precedent in the decisions of the Supreme Court.

Id.

tion to the South Carolina Supreme Court.

Chief Justice Littlejohn, writing for a unanimous court, noted the three different approaches taken by courts in other jurisdictions. The court noted that one approach is to examine the property interests of the co-insureds and deny recovery when the interests are nonseverable.[7] A second approach is to examine the insurance contract to determine whether the obligations of the insureds are joint or severable and allow recovery if they are severable.[8] A final approach, which virtually always allows an innocent co-insured to recover, is to allow recovery if the fraudulent act is severable from the interests of the insured.[9] The South Carolina Supreme Court adopted this third approach since it appealed to the court's sense of "reason and fairness."[10]

The court selected two cases to explain its reasoning. In *Hildebrand v. Holyoke Mutual Fire Insurance Co.*[11] the court defined the term "insured" as the specific insured responsible for causing the loss for which he is seeking to recover.[12] Using this definition in conjunction with the general rule that terms of an insurance policy must be construed liberally in favor of the insured and strictly against the insurer,[13] the court concluded that the policy language did not create a joint obligation. The court in *Hildebrand* also stated that recovery by an innocent spouse does not contravene public policy.[14]

The court then cited *Howell v. Ohio Casualty Insurance Co.*[15] for the proposition that the legal fiction of "oneness" of husband and wife cannot justify denying recovery to an innocent spouse.[16] Since the unity of spouses doctrine has been abolished

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7. 284 S.C. at 67, 325 S.E.2d at 63 (citing Morgan v. Cincinnati Ins. Co., 91 Mich. App. 48, 282 N.W.2d 829 (1979) and Short v. Oklahoma Farmers Union Ins. Co., 619 P.2d 588 (Okla. 1980)).

8. 284 S.C. at 67, 325 S.E.2d at 63 (citing St. Paul Fire & Marine Ins. Co. v. Malloy, 291 Md. 139, 433 A.2d 1135 (1981) and Ryan v. MFA Ins. Co., 610 S.W.2d 428 (Tenn. Ct. App. 1980)).

9. 284 S.C. at 68, 325 S.E.2d at 64 (citing Howell v. Ohio Casualty Ins. Co., 130 N.J. Super. 350, 327 A.2d 240 (1974) and Winter v. Aetna Casualty & Sur. Co., 96 Misc. 2d 497, 409 N.Y.S.2d 85 (1978)).

10. *Id.* at 68, 325 S.E.2d at 64.

11. 386 A.2d 329 (Me. 1978).

12. *See infra* note 20 and accompanying text.

13. 284 S.C. at 69, 325 S.E.2d at 64.

14. *Id.* at 68, 325 S.E.2d at 64.

15. 130 N.J. Super. 350, 327 A.2d 240 (1974).

16. 284 S.C. at 68-69, 325 S.E.2d at 64.

in South Carolina, the supreme court reasoned that the acts of one spouse could not be imputed to the other.[17] The court rejected the reasoning of the first approach by refusing to make a distinction between property held jointly or severally. The South Carolina court then held that an innocent co-insured could recover his portion of insurance proceeds.[18]

A careful analysis of *McCracken* shows that the South Carolina Supreme Court failed to make two potentially important distinctions in its reliance on *Hildebrand.* First, the *Hildebrand* court defined the term "insured" rather than the term "named insured."[19] Second, the South Carolina court failed to recognize a significant factual distinction between *Hildebrand* and *McCracken.* Mr. and Mrs. McCracken were both "named insureds." In *Hildebrand* the arsonist husband was not a "named insured" but an insured by policy definition.[20] The *Hildebrand* court allowed recovery by the "named insured" wife, even though the loss resulted from the intentional act of another "insured."[21] *Hildebrand* and the cases upon which it relied do not explicitly extend this reasoning to a situation where both innocent and guilty parties are "named insureds."[22] Texas law, for example, distinguishes cases involving an unnamed insured who destroys the property from cases in which both spouses are "named insureds" and a joint obligation arises, barring an innocent spouse from recovery.[23] The South Carolina Supreme Court, by overlooking these distinctions, appears to have extended the *Hildebrand* reasoning beyond its intended bounds.

Early cases that dealt with an innocent spouse's ability to recover generally denied recovery based on contract law princi-

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17. *Id.* at 69, 325 S.E.2d at 64.

18. *Id.*

19. 386 A.2d at 331. The *Hildebrand* policy defined "insured" in its fraud clause "to mean a specific insured, namely, the insured who (1) is responsible for causing the loss and (2) is seeking to recover under the policy." *Id.*

20. 386 A.2d at 331. Mr. Hildebrand was originally a named insured under the policy. He subsequently conveyed his interest in the property to his wife, leading the defendant insurance company to delete his name from the policy prior to the arson. *Id.* The *Hildebrand* policy stated: "The unqualified word 'insured' includes (1) the Named Insured and (2) if residents of his household, his spouse, ..." *Id.*

21. 386 A.2d at 331.

22. *See* Arenson v. National Auto. & Casualty Ins. Co., 45 Cal. 2d 81, 286 P.2d 819 (1955); Walker v. Lumbermens Mut. Casualty Co., 491 S.W.2d 696 (Tex. Civ. App. 1973).

23. *See* Jones v. Fidelity & Guar. Ins. Co., 250 S.W.2d 281 (Tex. Civ. App. 1952).

ples coupled with the nature of the property ownership or the marital relationship.[24] By rejecting these "anachronistic and outmoded concepts,"[25] South Carolina has joined the growing majority of jurisdictions that allow recovery by an innocent spouse.[26] In adopting the theory of *Howell*,[27] that ability to recover is based upon the severability of the fraudulent act from the innocent co-insured, the South Carolina Supreme Court has, however, left itself open to the charge that it has confused tort law with contract law.[28] Critics also argue that the *Howell* theory ignores the realities of the marital relationship and is an invitation to collusion.[29] Despite these charges, this view is gaining acceptance based upon public policy considerations of fairness.

The South Carolina court agreed with *Hildebrand* that allowing an innocent co-insured to recover was not against public policy.[30] The court, however, ignored the countervailing public policy argument that one should not be allowed to benefit from his own wrongdoing.[31] A subsequent benefit to the wrongdoer is

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24. Note, *The Problem of the Innocent Co-insured Spouse: Three Theories of Recovery*, 17 VAL. U.L. REV. 849, 858 (1983).

25. *Id.* at 862.

26. *See* Butler & Freemon, *The Innocent Coinsured: He Burns It, She Claims—Windfall or Technical Injustice?*, 17 FORUM 187 (1981). The authors list 10 jurisdictions which, in 1981, denied recovery based on contract or property theories of joint obligation and 14 jurisdictions which allowed recovery using various rationales. California was listed as denying recovery in Erlin-Lawler Enters. v. Fire Ins. Exch., 267 Cal. App. 2d 281, 73 Cal. Rptr. 182 (1968), and allowing recovery in Safeco Ins. Co. of Am. v. Kartsone, 510 F. Supp. 856 (C.D. Cal. 1981). Three years later, in McCann & Hall, *Innocent Spouse Doctrine—New Fire in an Old Issue*, 51 INS. COUNS. J. 86 (1984) the authors noted that only 6 jurisdictions still held to the old rule denying recovery while 20 now allow recovery.

27. 130 N.J. Super. 350, 327 A.2d 240 (1974).

28. *See* Butler & Freemon, *supra* note 26, at 206. The authors state:

> In fact, every jurisdiction allowing recovery by the innocent spouse did so by refusing to attribute the wrongful acts of one spouse to the other. . . . This approach disregards the fundamental principle that a tort gives rise to a debt. In an action upon an insurance policy, it is wrong to apply this analysis that must ultimately result in indemnity. Vicarious liability is not an attribute of marriage; each spouse retains an individual identity. However, basic tort analysis has been incorrectly applied to actions that are fundamentally contract in nature.

Id.

29. Note, *supra* note 24, at 869. The author points out that since proof of spousal complicity is very difficult, it is questionable whether coverage could ever be denied under the "innocent" spouse theory. *Id.* at 871.

30. 284 S.C. at 68, 325 S.E.2d at 64.

31. *See Hildebrand*, 386 A.2d at 331.

always possible if the fraudulent spouse is alive.[32] Addressing this problem, the *Hildebrand* court appears to have adopted a limitation that would bar recovery if the arsonist benefits either directly or indirectly from his act.[33] The *Hildebrand* court determined that Mr. Hildebrand would not benefit by his wife's recovery to an extent that would offend public policy.[34] The South Carolina court may have had this reasoning in mind when it limited the recovery of an innocent co-insured to "his or her share of the insurance proceeds,"[35] but adoption of this reasoning was not explicit and, hence, uncertain.

McCracken makes clear that the simplest way for insurance companies to preclude recovery by the innocent spouse is to put a provision in the insurance contract barring recovery by any co-insured if another co-insured causes the destruction of the insured property.[36]

James Michael Magee

II. RENEWAL OF AN INSURANCE POLICY CONTAINING AN EXCLUSIONARY CLAUSE CONSTITUTES A NEW CONTRACT

In *Allstate Insurance Co. v. Thatcher*[37] the South Carolina Supreme Court held that upon each renewal of a policy containing an exclusionary clause, the insurance company must comply anew with section 56-11-250 of the South Carolina Code.[38] The

32. Note, *supra* note 24 at 871.

33. 386 A.2d at 331-32; *see* Erlin-Lawler Enters. v. Fire Ins. Exch., 267 Cal. App. 2d 381, 385, 73 Cal. Rptr. 182, 185 (1968).

34. 386 A.2d at 332.

35. 284 S.C. at 69, 325 S.E.2d at 64.

36. *Id.* Recovery was allowed "in the absence of . . . specific policy language denying coverage to a co-insured for the arson of another co-insured." *Id.*

37. 283 S.C. 585, 325 S.E.2d 59 (1985).

38. South Carolina Code § 56-11-250 (1976) provides in pertinent part:

> [T]he insurer and any named insured may, by terms of a written amendatory endorsement, . . . agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. . . . *Provided, however,* no such natural person shall be so excluded unless (1) the driver's license has been turned into the State Highway Department or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. CODE ANN. § 56-11-250 (1976).

result in *Thatcher* is consistent with the court's earlier decisions and with decisions in a number of other states. The reasoning of the supreme court, however, is a departure from that of earlier supreme court decisions.

Nationwide issued to Mrs. Thatcher a six-month liability insurance policy that excluded Mr. Thatcher[39] under section 56-11-250 of the South Carolina Code because Mr. Thatcher's license had been suspended and surrendered to the highway department. His license, however, was reinstated during the six-month coverage period. One month after the reinstatement of Mr. Thatcher's license, the insurance policy was renewed with no change in the exclusionary clause.[40] Two months after renewal, while driving Mrs. Thatcher's car, Mr. Thatcher was involved in an accident. Nationwide argued that the exclusionary clause contained in the original policy remained effective. The trial court agreed and held that the exclusion was valid.[41] On appeal the supreme court reversed and held that the exclusionary clause was not enforceable because the requirements of section 56-11-250 had not been met at the time of renewal.[42]

The supreme court disagreed with the trial court's interpretation of section 56-11-250. Under the trial judge's view, the insured would have a duty to notify the insurer when the excluded person had his license reinstated. The supreme court stated that no such duty was imposed by the Thatchers' policy, the exclusionary clause, or the statute.[43] The policy did not make clear whether there was a duty to notify the insurer. Therefore, the court reasoned that when the policy language is ambiguous, the language must be interpreted most favorably to the insured, and the exclusionary clauses should be interpreted in a restrictive manner.[44] The court, however, reached its holding by suggesting

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39. Under South Carolina Code § 56-9-810(2), Mr. Thatcher would have been covered because he was driving the car with Mrs. Thatcher's consent. Section 56-9-810(2) defines "insured" as "the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, . . . and any person who uses with the consent, expressed or implied, of the named insured . . . ." S.C. CODE ANN. § 56-9-810(2) (1976).

40. 283 S.C. at 586, 325 S.E.2d at 60.

41. *Id.*

42. *Id.* at 587-88, 325 S.E.2d at 61.

43. *Id.* at 587, 325 S.E.2d at 60-61.

44. *Id.*, 325 S.E.2d at 60 (citing Tobin v. Beneficial Standard Life Ins. Co., 675 F.2d 606 (4th Cir. 1982); Buddin v. Nationwide Mut. Ins. Co., 250 S.C. 332, 157 S.E.2d 633

that a renewal of an insurance policy creates a new and independent contract. Thus, the court held the requirements of section 56-11-250 would have to be met upon each renewal.[45]

Nationwide argued that the renewal of the policy was merely a continuation of the existing policy; therefore, the exclusion was still in effect at the time of the accident.[46] The supreme court, however, stated, "In one sense of the word, the renewal of any contract creates a new contract."[47] The court's language does not preclude the argument that renewal might, in another sense, mean the continuation of an existing contract. The court seems to have mentioned only one interpretation of renewal to justify the holding in the case. More importantly, the court's interpretation of contract renewal is inconsistent with an earlier decision, *Hudson v. Reserve Life Insurance Co.*[48] In *Hudson* the court held that whether a renewal contract is an independent and new contract or a continuation of the original policy depends upon the intent of the parties as ascertained from the contract.[49] In determining whether the policy in *Hudson* was a new contract, the court examined the initial payment, the monthly payments, and the provisions concerning reinstatement and default. In *Thatcher*, however, the court did not examine the policy terms, even though the policy contained a provision concerning renewal. The court, therefore, bypassed this determination of intent under *Hudson*.

Although the *Thatcher* approach is inconsistent with the line of inquiry used in *Hudson*, the result in *Thatcher* reflects the view of many other jurisdictions.[50] These jurisdictions have held a renewal contract to be a new and separate contract unless the intention of the parties shows that the renewal constitutes a continuation of the original contract.[51]

(1967)).

45. 283 S.C. at 588, 325 S.E.2d at 61.

46. *Id.* at 587, 325 S.E.2d at 61.

47. *Id.*

48. 245 S.C. 615, 141 S.E.2d 926 (1965).

49. *Id.* at 617, 141 S.E.2d at 927.

50. *See* 13A J. APPLEMAN, INSURANCE LAW AND PRACTICE § 648, at 450 (1976).

51. Government Employees Ins. Co. v. United States, 400 F.2d 172 (10th Cir. 1968); Phelan v. Everlith, 22 Conn. Supp. 377, 173 A.2d 601 (1961); Guptill v. Pine Tree State Mut. Fire Ins. Co., 109 Me. 323, 84 A. 529 (1912); Perkins v. Century Ins. Co., of Edinburgh, Scotland, 303 Mich. 679, 7 N.W.2d 106 (1942); Schock v. Penn Township Mut. Fire Ins. Ass'n of Lancaster County, 148 Pa. Super. 77, 24 A.2d 741 (1942); Tebb v.

The South Carolina Supreme Court did not rely on intent in concluding that under the circumstances presented a renewal is a new contract. The court, however, did note several factors relating to intent. The court recognized that the Thatchers had the impression that coverage would resume when Mr. Thatcher's license was reinstated.[52] The court also attached importance to the fact that during a personal exchange between the Nationwide agent and Mr. Thatcher, the agent did not make inquiries concerning Mr. Thatcher's license.[53] These considerations, however, were not used to support an assertion that the renewal was a new contract. Rather, the court addressed the objective manifestations of intent to demonstrate the equity of construing the insurance contract favorably to the insured.[54]

The holding in *Thatcher* sets forth a basic procedural requirement. Upon each renewal of an insurance policy, an insurer must follow the requirements of section 56-11-250 in order to establish a valid exclusionary clause. To solve the problems of notification between renewals, the insurer could add a written, unambiguous provision to the policy requiring the insured to inform the insurer of the reinstatement of his license. It is possible, however, that in an attempt to protect an innocent third party, the court would not enforce such a provision.[55]

Connie F. Hoyle-Payne

III. STACKING OF INSURANCE COVERAGE UNDER A SINGLE LIMIT POLICY

In *Nationwide Mutual Insurance Co. v. Howard*[56] the South Carolina Supreme Court held that a $35,000 "single limit"[57] uninsured motorist policy does not constitute coverage

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Continental Casualty Co., 71 Wash. 2d 710, 430 P.2d 597 (1967).

52. 283 S.C. at 587, 325 S.E.2d at 61.

53. *Id.*

54. *See id.*

55. *See* Factory Mut. Liability Ins. Co. of Am. v. Kennedy, 256 S.C. 376, 182 S.E.2d 727 (1971), in which the court held that the insured would not be barred from recovery for failure to notify the insurer of a claim unless the insurer could show that the delay resulted in substantial prejudice to the insurer's rights.

56. 288 S.C. 5, 339 S.E.2d 501 (1985).

57. A "single limit" insurance policy is one in which the insurance company pro-

in excess of the "basic limits" as defined in section 56-9-820 of the South Carolina Code.[58] The court, however, held that the amount "stackable"[59] is $15,000 in single limit policies where only one person is injured[60] and refused to allow a contractual limitation of liability in violation of public policy.[61]

Gene L. Howard was seriously injured when one of his eight motor vehicles was hit by an unidentified motorist. In a "John Doe" action against the unidentified, uninsured motorist, Howard recovered a $500,000 judgment. Two of Howard's vehicles, including the truck involved in the accident, were covered by a policy with Northland Insurance Company (Northland) providing the minimum statutory coverage of 15,000/30,000/5000 (15/30/5). Three other vehicles were covered under a Nationwide Mutual Insurance Company (Nationwide) policy, also written as 15/30/5. The remaining three vehicles were covered by separate Nationwide single limit policies, each in the amount of $35,000. The trial court determined that Howard could stack the coverage of his single limit policies in full, and the court of appeals affirmed.[62] The supreme court held that single limit policies were subject to the basic limits for stacking as set forth in section 56-9-820, and stacking was not allowed in excess of the cap provided in section 56-9-831 of the South Carolina Code.[63]

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vides a specified amount of coverage for each accident regardless of the number of persons injured. A. WIDISS, A GUIDE TO UNINSURED MOTORIST COVERAGE § 2.36 (1969 & Supp. 1981). This type of coverage allows one person to recover up to the specified single limit in the policy. The more typical "split limit" policy provides a specific amount of coverage for an individual injured in an accident and another amount for each accident regardless of how many are injured.

58. S.C. CODE ANN. § 56-9-820 (1976) sets the statutory minimum for liability coverage at $15,000 for bodily injury to or death of one person in any one accident; $30,000 for bodily injury to or death of two or more persons in any one accident; and $5000 for injury to or destruction of property of another in any one accident. S.C. CODE ANN. § 56-9-830 (1976) requires each liability policy issued to contain an uninsured motorist provision with no less than the basic limits set forth in § 56-9-820.

59. "Stacking" occurs when an insured who has more than one type of insurance coverage for injuries sustained in a specific type of accident sustains a covered injury and seeks recovery under each of the applicable policies. 7 AM. JUR. 2D *Automobile Insurance* § 326 (1980); *see also* Nationwide Mut. Ins. Co. v. Bair, 257 S.C. 551, 554 n.1, 186 S.E.2d 410, 411 n.1 (1972).

60. 288 S.C. at 10, 339 S.E.2d at 504.

61. *Id.* at 11-12, 339 S.E.2d at 504.

62. For a discussion of the court of appeals decision, see *Insurance Law, Annual Survey of South Carolina Law*, 37 S.C.L. REV. 157 (1985).

63. South Carolina Code § 56-9-831 states in part:

The supreme court first concluded that insurance policies containing uninsured motorist coverage in excess of basic limits may not be stacked under section 56-9-831.[64] In *Gambrell v. Travelers Insurance Co.*[65] and *Garris v. Cincinnati Insurance Co.*,[66] the South Carolina Supreme Court interpreted this section to allow stacking of *underinsured* motorist coverage up to, but not in excess of, the basic liability limits of 15/30/5 as defined in section 56-9-820. The court in *Howard* reasoned that the same rule applies to stacking of *uninsured* motorist coverage. Section 56-9-831 establishes a cap on stacking of insurance policies to the amount of the basic limits set forth in section 56-9-820 and does not, as the court of appeals suggested, prohibit stacking of policies in excess of the basic limits.[67] Therefore, even though the court held that the single limit policies of $35,000 were within the basic limits of coverage provided by statute, the entire amount was not necessarily available for stacking.

The court next considered the amount of stackable coverage. The court of appeals affirmed the trial court's holding that the full $35,000 of the single limit policies could be stacked "because they contain no breakdown like the $15,000 and $30,000 policies."[68] The supreme court held, however, that failure to break down the coverage does not affect the limitation on stacking.[69]

Section 56-9-831 contains two limitations on stacking where an insured or named insured has a vehicle involved in an accident. In addressing the first limitation, the *Gambrell* court in-

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> If . . . an insured . . . is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Coverage on any other vehicle shall not be added to that coverage.

S.C. CODE ANN. § 56-9-831 (Supp. 1985). Stacking is, therefore, allowed up to, but not in excess of the basic liability limits of 15/30/5, defined in S.C. CODE ANN. § 56-9-820 (1976). *See* Gambrell v. Travelers Ins. Co., 280 S.C. 69, 73, 310 S.E.2d 814, 817 (1983).

64. 288 S.C. at 8-9, 339 S.E.2d at 502.

65. 280 S.C. 69, 310 S.E.2d 814 (1983).

66. 280 S.C. 149, 311 S.E.2d 723 (1984).

67. 288 S.C. at 9, 339 S.E.2d at 503.

68. Nationwide Mut. Ins. Co. v. Howard, 284 S.C. 17, 19-20, 324 S.E.2d 323, 325 (Ct. App. 1985).

69. 288 S.C. at 10, 339 S.E.2d at 503.

terpreted this section to permit stacking up to, but not in excess of, the basic limits of 15/30/5 required in section 56-9-820.[70] Howard argued that the aggregate amount of basic coverage in a 15/30/5 policy is $35,000; thus, when a single limit policy is written in that amount, no part of the $35,000 constitutes excess of basic liability limits permitted to be stacked for a claim of one person only. The court did not agree, reasoning that the plain meaning of section 56-9-820 sets the basic limit of uninsured coverage required for protection of one person at $15,000. Any greater amount, even in a single limit policy, would be excess coverage not allowed to be stacked.[71]

Section 56-9-831 contains a second limitation. The amount of coverage that may be stacked from policies on vehicles not involved in the accident is limited to an amount not greater than the coverage of the vehicle involved in that accident.[72] The truck involved in this accident was covered by a policy providing maximum coverage of $15,000 to Howard. The court reasoned, therefore, that stacking amounts were limited to $15,000 in both the 15/30/5 and the single limit policies.[73] Even though the single limit policies contained no such limitation, the court held the applicable provisions of the statute prevailed as if expressly incorporated in the policy.[74] Although the intention of the South Carolina legislature, as interpreted by the court, was not to create a basic limit of $35,000 for single limit insurance policies, Nationwide's use of these policies without a limitation created an ambiguity which, seemingly contrary to settled insurance law, was construed against the insured.[75]

The final issue decided by the court, but never addressed by the court of appeals, concerned an attempted contractual reduc-

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70. 280 S.C. at 73, 310 S.E.2d at 817.

71. 288 S.C. at 10, 339 S.E.2d at 504.

72. *Id.* at 11, 339 S.E.2d at 504; S.C. CODE ANN. § 56-9-831 (Supp. 1985).

73. 288 S.C. at 11, 339 S.E.2d at 504.

74. *Id.* (citing Southern Farm Bureau Casualty Ins. Co. v. Fulton, 244 S.C. 559, 137 S.E.2d 769 (1974)). In *Fulton* the court held that the insured's spouse fell within the definition of "insured" as set out in the Uninsured Motorist Act and was covered by the insured's policy despite the absence of such coverage in the policy. It should be noted that in *Fulton* the ambiguity was construed against the insurer.

75. South Carolina courts have repeatedly held that if the terms of an insurance policy are ambiguous, obscure, or susceptible of more than one construction, the terms of the policy must be construed agianst the insurer. *See, e.g.*, Gaskins v. Blue Cross-Blue Shield, 271 S.C. 101, 245 S.E.2d 598 (1978).

tion of coverage by Nationwide. Each of the four Nationwide policies contained provisions that uninsured motorist coverage payments were to be reduced by any other uninsured motorist coverage to the vehicle involved in the accident. Since the truck involved in the accident was covered by a $15,000 uninsured Northland policy, Nationwide argued these provisions reduced the amount of their coverage by $15,000. The court reasoned that the fundamental purpose of the statute is to provide additional protection; therefore, coverage that was nowhere limited to the use of the insured vehicle cannot be so limited by the policy provisions.[76] Under the statute, the insurer is obligated to pay all sums which the insured is legally entitled to recover from the tortfeasor up to the limit of insurance provided.[77] Howard's damages exceeded the sum of available coverages. Thus, under the standards set forth, the contractual attempt to reduce liability was void.[78] *Howard*, therefore, serves as a warning to insurance companies that attempts to reduce liability will not be upheld if these attempts would contravene the fundamental purpose of the statute.

Nancy W. Monts

IV. ACTION FOR WRONGFUL TERMINATION OF INSURANCE AGENCY LIMITED

In *Morgan v. Kemper Insurance Co.*[79] the Fourth Circuit Court of Appeals held that an insurance agent's action for wrongful termination of an agency agreement must be brought pursuant to section 38-37-940(2) of the South Carolina Code[80]

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76. 288 S.C. at 12, 339 S.E.2d at 504. *See* Hogan v. Home Ins. Co., 260 S.C. 157, 194 S.E.2d 890 (1973).

77. Boyd v. State Farm Mut. Auto. Ins. Co., 260 S.C. 316, 195 S.E.2d 706 (1973).

78. 288 S.C. at 12, 339 S.E.2d at 504-05.

79. 754 F.2d 145 (4th Cir. 1985).

80. South Carolina Code § 38-37-940(2) provides:

> No insurer of automobile insurance shall cancel its representation by an agent primarily because of the volume of the automobile insurance placed with it by the agent on account of the statutory mandate of coverage nor because of the amount of the agent's automobile insurance business which the insurer has deemed it necessary to reinsure in the Facility.

S.C. CODE ANN. § 38-37-940(2) (1976).

and not pursuant to the preface of that section.[81] Furthermore, the court held that retroactive application of section 38-37-940(2) would violate the contract clauses of both the United States Constitution[82] and the South Carolina Constitution.[83]

In April 1974 C. Lane Morgan (Morgan) entered into a preferred agency agreement permitting him to write property and casualty insurance for Lumbermen's Mutual Insurance Co. (Lumbermen's) and American Motorists Insurance Co. (Motorists). In May 1981 Morgan, Lumbermen's, Motorists, and American Manufacturers Mutual Insurance Co. (Manufacturers) signed an endorsement to the original agreement, amending it to allow Morgan to write property and casualty insurance for Manufacturers.[84] These three insurance companies were collectively known as the Kemper Group. In August 1981 the Kemper Group wrote a letter to Morgan expressing concern over their higher loss ratios attributable to Morgan's practice of writing insurance policies for high risk drivers.[85] In September 1981 Morgan was officially notified of the termination of his authority to write automobile insurance for the three companies.[86]

Morgan then brought an action against the companies, alleging that his termination violated section 38-37-940(2). The district court entered judgment for the insurers and Morgan appealed. The court of appeals affirmed, holding that the wrongful termination statute could not be applied retroactively to impair

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81. 754 F.2d at 146-47. The preface to South Carolina Code § 38-37-940 states in pertinent part:

> No insurer of automobile insurance shall directly or indirectly by . . . imposition or threat of penalty or through any artifice or device whatsoever, . . . impose any detriment upon any . . . agent for the purpose of avoiding any class or type of automobile insurance risk which the insurer deems it necessary to reinsure in the Facility; nor shall any such . . . imposition or threat of penalty in connection with any other line or type of insurance be so tied to automobile insurance as to have a tendency to induce the agent to avoid any such class or type of automobile insurance risk . . . . Any act in violation of this section shall constitute an act of unlawful discrimination and unfair competition which, if willful, shall result in the suspension or revocation of the insurer's certificate of authority for not less than six months.

S.C. CODE ANN. § 38-37-940 (1976).

82. U.S. CONST. art. I, § 10, cl. 1.

83. 754 F.2d at 148; S.C. CONST. art. I, § 4.

84. 754 F.2d at 146.

85. S.C. CODE ANN. § 38-37-920 (1976) requires all automobile insurance agents to accept automobile insurance applications from high risk drivers at set premium rates.

86. 754 F.2d at 146.

the insurers' preexisting contractual right to terminate the agent.[87] The court further held the statute to be inapplicable unless automobile insurance has been placed directly with an insurer.[88]

In reaching its decision, the court strictly interpreted section 38-37-940. Morgan argued that he could maintain the action against Manufacturers under both section 38-37-940(2) and the preface to that section. The court disagreed, stating that section 38-37-940(2) cannot be violated unless automobile insurance is placed directly with an insurer. In reaching this conclusion, the court emphasized the express language of the statute: "automobile insurance placed with *it* by the agent . . . ."[89] The court further noted that an action for wrongful termination of an agency agreement is found solely under section 38-37-940(2) and not under the preface. The court stated that South Carolina case law supported this conclusion, citing *Insurance Financial Services v. South Carolina Insurance Co.*,[90] in which the supreme court stated that section 38-37-940(2) creates a private cause of action. Furthermore, the *Morgan* court concluded that because the preface, unlike section 38-37-940(2), contains its own penalties for violation, the "directly or indirectly" language applies only to the preface and not to other sections.[91]

The dissent in *Morgan*, however, did not agree with the majority's interpretation of South Carolina statutory and case law, and in many respects set forth a clearer rationale. The dissent initially emphasized the close relationship between the insurance companies in the Kemper Group. The business written on behalf of any one of the companies was pooled, the premiums combined, and the losses and expenses prorated. Therefore, the high loss ratios occasioned by Morgan affected all three companies equally, even though technically no insurance was placed directly with Manufacturers.[92] The dissent concluded that insurance was, in effect, placed directly with Manufacturers and, consequently, they should be held liable under section 38-37-

87. *Id.* at 147; *see also* G-H Ins. Agency v. Continental Ins. Co., 278 S.C. 241, 294 S.E.2d 336 (1982).

88. 754 F.2d at 147.

89. *Id.* (quoting S.C. CODE ANN. § 38-37-420(2) (1976) (emphasis added)).

90. 282 S.C. 144, 318 S.E.2d 10 (1984).

91. 754 F.2d at 147.

92. *Id.* at 148.

940(2).[93]

Even if insurance was not placed directly with Manufacturers, the dissent determined that the prefatory language of the statute revealed an intent of the South Carolina legislature to sweep as broadly as possible in prohibiting such direct or indirect restraints on an agent.[94] The dissent reasoned that this modifying phrase, after establishing the intent of the section, need not be subsequently repeated in the subsections. Section 38-37-940(2), therefore, should not be limited to insurance placed directly with the insurer.[95]

Although the majority opinion appears to conclude that South Carolina case law does not recognize a cause of action unless insurance is placed directly with the insured, the dissent points out that neither the supreme court nor the court of appeals has ever addressed this issue. The dissent further stated that the South Carolina Supreme Court would hold that a cause of action exists where, as here, an agent's contract with one insurer is terminated at the behest of intimately interrelated companies, even if no insurance was formally placed with the terminating company.[96]

Even though this decision is not binding on South Carolina courts, agents should be cautious and place insurance directly with *each* insurer to protect their rights under section 38-37-940(2), at least until the state courts determine the issue.

The court also found that Lumbermen's and Motorists had not violated section 38-37-940(2) because each had an existing contractual right to terminate their agreements with Morgan in existence before that section was enacted. The court concluded that allowing Morgan to sue the companies for exercising that right would violate the contract clauses of both the state and federal constitutions.[97] In reaching this decision, the court stated that novation[98] did not occur when Manufacturers was added to

93. *Id.* at 150-51 (Murnaghan, J., dissenting).

94. *Id.* at 150 (Murnaghan, J., dissenting).

95. *Id.* (Murnaghan, J., dissenting).

96. *Id.* at 149-50 (Murnaghan, J., dissenting).

97. *Id.* at 147-48.

98. A novation is a mutual agreement between all parties concerned for the discharge of a valid existing obligation by the substitution of a new valid obligation on the part of the debtor. Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 262, 199 S.E.2d 719, 722 (1973)(quoting Smith Bros. Grain Co. v. Adluh Milling Co., 128 S.C. 434, 122 S.E.

the original agreement on May 21, 1981. Therefore, the 1971 agreement, which was executed before the enactment of section 38-37-940(2), was controlling.[99] The dissent, however, reasoned that the default was actually brought about by the 1981 agreement, which added Manufacturers as a party.[100] Therefore, section 38-37-940(2) would not be applied retroactively in this situation and no constitutional problem would arise.

The first South Carolina case to hold that retroactive application of section 38-37-940(2) was violative of the contract clauses of the state and federal constitutions was *G-H Insurance Agency v. Continental Insurance Co.*[101] In that case, however, the supreme court did not address the applicability of the section to contracts initially entered into prior to its passage, but subsequently amended. While *Morgan* does not directly address this issue, it does suggest that a novation may render an insurer liable in such a situation, if all other conditions are met. The court noted that Morgan was in effect claiming that a novation occurred when Manufacturers was added to the original agreement. The court cited *Superior Automobile Insurance Co. v. Maners*[102] in holding that an intention by all parties to substitute a new obligation for the existing one is necessary for a novation.[103] The court then decided this intent did not exist in the present case because the parties' contract stated that it would constitute a separate agreement between Morgan and each of the companies.[104] The dissent, however, argued that this self-serving clause was immediately negated because the agreement provided that a default in one agreement would be a default in all the agreements.[105] The dissent, therefore, reasoned that a novation had occurred, which granted Morgan a cause of action against both Lumbermen's and Motorists.[106]

While the decision on the issue of intent in this action may be questionable, *Morgan* implies that section 38-37-940(2) may

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868 (1924)).

99. 754 F.2d at 148.

100. *Id.* at 151 (Murnaghan, J., dissenting).

101. 278 S.C. 241, 294 S.E.2d 336 (1982).

102. 261 S.C. 257, 199 S.E.2d 719 (1973).

103. 754 F.2d at 148.

104. *Id.*

105. *Id.* at 151 (Murnaghan, J., dissenting).

106. *Id.* at 150-51 (Murnaghan, J., dissenting).

be applicable to a contract entered into prior to its passage but later amended. Insurance companies, agencies, and their attorneys, therefore, should consider the potential consequences of amending existing contracts and expressly cover the novation aspect in the amendment.

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V. INTENT OF INSURED DETERMINES BENEFICIARY'S SUBROGATION RIGHT WHERE POLICY IS PLEDGED AS SECURITY FOR A DEBT

In *Falk v. Vreeland Trading Corp.*[107] the South Carolina Court of Appeals held that the intention of the insured ordinarily determines whether a beneficiary of a life insurance policy pledged by the insured as security for a debt possesses a right of subrogation. This holding reflects the majority rule on this issue.[108]

In 1966 Vreeland Trading Corporation (Vreeland) obtained a loan from the United States Small Business Administration (SBA). The loan was secured by a loan agreement and an assignment of a life insurance policy.[109] The policy lapsed in 1970 and Kenneth Hopps, owner of all the capital stock in Vreeland, replaced it with another. Hopps named Thalia Falk as fifty percent beneficiary under the second policy. Later Hopps assigned this policy to the SBA to secure the Vreeland note. Upon the insured's death, the SBA, instead of proceeding against the debtor's estate, applied the insurance proceeds assigned as security toward satisfaction of the debt.[110] Falk appealed from an order of the trial court denying her subrogation claim.

The court of appeals held that the insured did not intend the policy to be the primary source of payment of the debt and, therefore, the beneficiary acquired the right to the proceeds through subrogation.[111] The court reasoned that a beneficiary's

107. 284 S.C. 201, 325 S.E.2d 333 (Ct. App. 1985).

108. The court in Smith v. Coleman, 184 Va. 259, 271, 35 S.E.2d 107, 113 (1945) noted: "The cases are practically unanimous in declaring that the intention of the insured is the controlling factor in determining the rights of the parties."

109. 284 S.C. at 203, 325 S.E.2d at 334.

110. *Id.*

111. *Id.* at 204, 325 S.E.2d at 335.

right to subrogation depends upon the intention of the insured.[112] Although the court failed to delineate any factors which should be considered in determining this intent, it did note that none of the documents executed by the insured contained an express provision depriving Falk of her interest as beneficiary under the policy.[113] The insured could easily have stated in the policy or the will that the policy proceeds would be the primary fund from which to satisfy the debt. The court concluded that the absence of such express provisions evidenced his intent not to deprive Falk of her interest in the policy.[114] Furthermore, the court rejected the defendant's argument that the insured's testamentary bequest of 50,000 dollars to Falk evidenced an intent to eliminate her as a beneficiary of the policy.[115]

Prior to this decision, South Carolina had addressed this subrogation issue only in situations involving assignment of an insurance policy as security for a mortgage.[116] Consequently, the court of appeals examined how other jurisdictions had resolved the issue. The cases noted were virtually unanimous in stating that the intention of the insured determined the rights of the parties.[117] Although the courts repeatedly emphasize that the intent of the insured is controlling, they fail to enumerate any criteria for determining this intent. It appears that intent depends on the facts of each case.[118]

Some courts, however, have adopted what appears to be a presumption that, absent an express provision to the contrary, the insured intended subrogation to be allowed.[119] The court in

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112. *Id.* at 203, 325 S.E.2d at 335.

113. *Id.* at 204, 325 S.E.2d at 335.

114. *Id.*

115. *Id.* at 205, 325 S.E.2d at 335.

116. In these situations, the right to subrogation of a beneficiary of a life insurance policy pledged as security for a debt also depends primarily on the intention of the insured. Murphy v. Murphy, 259 S.C. 147, 190 S.E.2d 735 (1972). The situation is different from that in *Falk* because, when a mortgage is involved, "the beneficiary seeking subrogation to the rights of the creditors does not merely assert a right as a common creditor against the general assets of the insured's estate, but seeks to be subrogated to the position of a creditor having the right to foreclose against specific real estate securing the debt." *Id.* at 152, 190 S.E.2d at 737.

117. Smith v. Coleman, 184 Va. 259, 271, 35 S.E.2d 107, 113 (1945); *see also In re* Estate of Mundell, 459 So. 2d 358 (Fla. Dist. Ct. App. 1984); Seitz v. Seitz, 238 Miss. 296, 118 So. 2d 351 (1960); *In re* Gallagher's Will, 57 N.M. 112, 255 P.2d 317 (1953).

118. *See, e.g., Seitz*, 238 Miss. at 303, 118 So. 2d at 353.

119. *See, e.g.*, Chaplin v. Merchants Nat'l Bank, 186 F. Supp. 273 (N.D. Ill. 1959);

Falk did not acknowledge such a presumption or state which party has the burden of proof. It did, however, make it clear that the insured should expressly state whether the policy or the estate is to be the primary security for a debt. This clarification could prevent confusion and unnecessary litigation.

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VI. Statute Requiring Insurance Coverage for State-Owned School Buses Construed

In *Toney v. South Carolina Department of Education*[120] the South Carolina Supreme Court interpreted section 59-67-710 of the South Carolina Code,[121] which mandates insurance coverage on state-owned school buses. The case is important for its resolution of two apparently conflicting provisions within section 59-67-710. In addition, the subsequent decision of *McCall v. Batson*[122] raises the question of how section 59-67-710 is affected by the recent abrogration of sovereign immunity in South Carolina.

The plaintiff was the father and administrator of the estate of a second grade student who was fatally injured when struck by a school bus. Immediately after debarking from one school bus, the decedent was struck by a negligently driven second school bus. At issue was whether the plaintiff had only one valid claim under subsection (1)(a) of section 59-67-710[123] or more than one claim, since two buses were involved. Reversing the decision of the court of appeals, the South Carolina Supreme Court held that the plaintiff was limited to recovery of the $15,000 death benefit provided under subsection (1)(a) only.[124]

Rountree v. Frazee, 282 Ala. 142, 209 So. 2d 424 (1968); *In re* Estate of Mundell, 459 So. 2d 358 (Fla. Dist. Ct. App. 1984); Murnane v. Murnane, 447 S.W.2d 590 (Ky. 1969); Seitz v. Seitz, 238 Miss. 296, 118 So. 2d 351 (1960); Walzer v. Walzer, 3 N.Y.2d 8, 143 N.E.2d 361, 163 N.Y.S.2d 632 (1957).

120. 284 S.C. 401, 327 S.E.2d 322 (1985).

121. S.C. Code Ann. § 59-67-710 (1976 & Supp. 1985). Insurance coverage is obtained by the Division of General Services. *Id.* § 59-67-710(1).

122. 285 S.C. 243, 329 S.E.2d 741 (1985).

123. S.C. Code Ann. § 59-67-710(1)(a) (Supp. 1985).

124. The plaintiff in fact received $15,000 prior to commencement of the suit. 284 S.C. at 406, 327 S.E.2d at 325.

Subsection (1)(a) requires that the insurance contract provide benefits "[f]or the lawful occupant of any . . . school bus who suffers bodily injuries or death,"[125] regardless of fault. A child approaching or leaving a school bus is within the ambit of subsection (1)(a).[126] Subsection (1)(b) requires benefits "[f]or any person, other than a person riding on a school bus or a person who qualifies for benefits under paragraph (a) . . ." and is applicable when negligence is proven.[127]

Prior to *Toney*, the South Carolina Supreme Court held in *Coats v. Insurance Co. of North America*[128] that when only one bus was involved, a plaintiff could not recover under both subsections (1)(a) and (1)(b).[129] The plaintiff in *Toney* adduced two theories for his claim to recover on the insurance coverage of each bus separately. First, he argued that in addition to recovery under (1)(a), recovery under (1)(b) was proper because the decedent was a passenger and the plaintiff could prove negligence in the operation of the second bus.[130] Second, he argued that even if the plaintiff could not recover under both (1)(a) and (1)(b), two claims under (1)(a) were proper because the incident involved two buses with two separate insurance coverages.[131]

The court of appeals found the first argument persuasive and affirmed the trial court's decision to overrule the defendant's demurrer.[132] The involvement of two buses was deemed sufficient to remove the case from the rule of *Coats*. In reversing the court of appeals, the South Carolina Supreme Court held that *Coats* was dispositive and that the decedent was covered by subsection (1)(a) as to both buses.[133] The court, thus, summarily dismissed the argument that the statute intended a separate recovery based on each school bus.

The supreme court's decision also differed from the court of appeals in its application of *Nance v. State Board of Educa-*

125. S.C. CODE ANN. § 59-67-710(1)(a) (Supp. 1985).

126. *Id.* § 59-67-710(2)(f) (1976); *see also* Farmer v. National Sur. Corp., 223 S.C. 143, 74 S.E.2d 580 (1953).

127. S.C. CODE ANN. § 59-67-710(1)(b) (Supp. 1985).

128. 262 S.C. 331, 204 S.E.2d 436 (1974).

129. *Id.* at 333, 204 S.E.2d at 437.

130. *See* 284 S.C. at 404, 327 S.E.2d at 324.

131. *See id.*

132. Toney v. S.C. Dep't of Educ., 279 S.C. 484, 309 S.E.2d 773 (Ct. App. 1983).

133. 284 S.C. at 404, 327 S.E.2d at 324.

tion.[134] In *Nance* the supreme court held that recovery under both subsections (1)(a) and (1)(b) was proper where the plaintiff sued derivatively for the decedent under (1)(a) and for his own personal injuries under (1)(b).[135] Subsequent to the accident for which the *Nance* action was brought, section 59-67-710(1)(b) was amended to provide for recovery for "bodily injuries" rather than "personal injuries."[136] The court of appeals, nevertheless, regarded *Nance* as dispositive for its finding that subsections (1)(a) and (1)(b) were not necessarily mutually exclusive.[137]

The South Carolina Supreme Court found *Nance* inapplicable. "Bodily injuries" was held not to include the plaintiff's injuries: pecuniary loss, mental shock, mental suffering, wounded feelings, grief, sorrow, or loss of society and companionship. Therefore, the plaintiff could only bring a cause of action that the decedent would have had had she survived, and the decedent is expressly precluded from recovering under both subsections.[138]

Section 59-67-765 of the South Carolina Code provides for a waiver of sovereign immunity up to the limits of the insurance coverage required by section 59-67-710.[139] These limits of liability must be reexamined in light of the judicial abolition of sovereign immunity in *McCall v. Batson.*[140] Under *McCall* there are two ways to interpret section 59-67-710. One interpretation is that the injury benefits explicit in the statute now operate as a cap on liability. This mechanical interpretation in effect reinstates the doctrine of sovereign immunity for an amount of recovery in excess of the statutory benefit. Although logically sound, this interpretation conflicts with the legislative intent of

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134. 277 S.C. 64, 282 S.E.2d 848 (1981).

135. Subsection (1)(b) provides coverage "[f]or any person, other than . . . a person who qualified for benefits under paragraph (a)." S.C. CODE ANN. § 59-67-710(1)(b) (Supp. 1985).

136. 1977 S.C. Acts 558, No. 215; *see* S.C. CODE ANN. § 59-67-710(1)(b) (Supp. 1985).

137. Toney v. S.C. Dep't of Educ., 279 S.C. 484, 488-89, 309 S.E.2d 773, 775 (Ct. App. 1983). The court of appeals granted the defendant a rehearing since *Nance* was raised for the first time in that court's opinion. Upon rehearing the court of appeals ruled that despite the change in language, *Nance* stood for the proposition that the statute does not necessarily preclude recovery under both subsections.

138. 284 S.C. at 404, 327 S.E.2d at 325.

139. S.C. CODE ANN. § 59-67-765 (Supp. 1985). Added in 1977, this section has procedural significance in that it permits a cause of action directly against the government entity.

140. 285 S.C. 243, 329 S.E.2d 741 (1985).

providing an exception to government immunity. In effect, it creates a restriction on government liability.

An alternative interpretation gives greater effect to *McCall*. The abrogation decision was premised in part on the recognition that, with regard to the sovereign immunity doctrine, "exceptions that have been carved out by the legislature reflect a scattered patchwork of sovereign liability that lacks continuity, logic, or fairness."[141] Presumably, section 59-67-710 is just such an exception. This interpretation would obviate section 59-67-765. Section 59-67-710 by itself is not necessarily inconsistent with abrogation of sovereign immunity since it merely mandates procurement of insurance coverage by setting a minimum, but not a maximum.[142] This appears to be the more reasonable interpretation, absent further legislative clarification.[143]

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141. *Id.* at 245, 329 S.E.2d at 742. The court in *McCall* cited as an example the disparity in recovery limits for personal injury on county and municipality maintained roads.

142. "Nothing contained herein shall prevent the Director of the Division of General Services from providing insurance contracts with limits above those specified . . . ." S.C. CODE ANN. § 59-67-710(1)(c) (Supp. 1985).

143. Since the writing of this article, the South Carolina Legislature has enacted the South Carolina Tort Claims Act, 1986 S.C. Acts ___, No. 463 (to be codified at S.C. CODE ANN. §§ 15-78-10 to -170 (1976)). The Act explicitly provides for limited and qualified liability of political subdivisions for torts committed by government employees acting within the scope of their official duties. *Id.* (to be codified at S.C. CODE ANN. § 15-78-20(b) (1976)). The legislature specifically amended S.C. CODE ANN. § 52-67-610(1)(b) (Supp. 1985) to require insurance contracts on state-owned school buses to provide benefits "for the lawful occupant of any such school bus who suffers bodily injuries an amount sufficient to defray the cost of . . . medical expenses up to three thousand dollars . . . ." 1986 S.C. Acts ___, No. 463, § 4.