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I. INTRODUCTION

Since 1966, Professor Maximilian A. Pock has been the author of the Insurance section of the Annual Survey of Georgia Law. During this period of time, his scholarly analysis of and keen insight into the decisions of the Georgia Appellate Courts have been of great benefit to those of us whose practice dictates that we stay abreast of the trends and movements of the courts as shown by their published opinions. Contributing to a publication such as the Annual Survey of Georgia Law is no easy task, but continuing to do so for such an extended period of time exhibits extraordinary dedication and commitment. For this Professor Pock deserves our gratitude, appreciation, and recognition.

The current article will probably not be as scholarly and may not be consistent with the standard that Professor Pock has established, but hopefully it will be informative and will provide the practitioner with some hint of predictability of the future decisions of the Georgia Appellate Courts regarding insurance issues.

The number of cases reaching the Georgia Appellate Courts during this survey period is less than that of prior years. The courts continue to struggle with the "easy to read" policies that are currently in widespread use in the state, and the uninsured or underinsured motorist provisions of automobile policies continue to receive the greatest attention from the courts during this survey period.

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2. This survey includes cases reported during the period from June 1, 1995 through May 31, 1996. Approximately thirty cases reached the courts during this period. According to Professor Pock, the average has been closer to ninety in the past several years. See Maximilian A. Pock, Insurance, 47 MERCER L. REV. 153, 153 n.1 (1995).
3. Approximately one-third of the reported decisions include construction or application of the uninsured or underinsured motorist provisions of policies or O.C.G.A. § 33-34-1.
The cases selected for inclusion in this article hopefully demonstrate the approach used by our appellate courts in dealing with construction and interpretation of specific policy language and will be presented herein according to the type of policy or insurance being considered.

II. AUTOMOBILE INSURANCE

A. Policy Construction

In *Dolly Griffin & Associates v. International Indemnity Co.*, the automobile insurance policy issued to Dolly covered a semi-tractor which was used to haul trailers. The tort action that spawned this declaratory judgment action by International Indemnity arose when one Berrey collided with a trailer owned by CSX Transportation. Dolly, using the insured tractor, illegally and negligently parked the tractor on a roadway. International Indemnity’s policy provided for payment of Dolly’s liability “resulting from the . . . use of a covered auto.”

The court of appeals acknowledged that the definition of the word “use” in this context is “elusive” and then applied the liberal definition of the word “use” previously adopted. Under this definition, the court recognized that a claim against Dolly “might remain viable” for some time after the trailer was disconnected from the tractor, but that if the injury were only “remotely connected” to the use of the tractor, there could be no recovery. Accordingly, the matter was left for a jury to inquire into the proximity in time, space, and circumstance between the use of the tractor and plaintiff’s injuries, and to ultimately determine, as a matter of fact, whether the injuries arose from the use of the insured vehicle.

The court considered for the first time the language of an exclusion in a commercial truck policy in *Florida International Indemnity Co. v. Guest.* In the “Exclusive Mileage Exclusion,” it was agreed that the insurance “[does] not apply, if any trips of the automobile exceed a 150 mile radius” of the place where the truck was principally garaged. In this case, the accident occurred within the 150 mile radius, but on a trip where the destination was more than 150 miles. After comparing other similar policy language, which excluded accidents or losses while the

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5. Id. at 377, 469 S.E.2d at 465.
9. Id. at 223, 464 S.E.2d at 848.
vehicle was being operated outside a 150 mile radius, the court decided that there was no coverage in this case. In other cases construing Georgia law, courts have held that even with policy language specifying that "(i)t is expressly understood and agreed that occasioned trips beyond the radius specified are not permitted"; coverage resumed when the vehicle on such a nonpermitted trip re-entered the "magic circle" of the specified radius. The distinction between the language, as explained by the court of appeals, is that the language in Guest focused upon the destination of the trip, whereas the other language focused upon the physical location of the vehicle at the time of the accident.

Two cases that deal with the subrogation or reimbursement provisions of automobile policies were decided within the survey period. The continuing controversy centers around the question of whether the language creates a "right of reimbursement" or an assignment of a portion of a personal injury claim. If only a "right of reimbursement" is created, the language is effective. If an assignment is created, it is prohibited by the application of the provisions of section 44-12-24 of the Official Code of Georgia Annotated ("O.C.G.A.").

In the first case, Integon General Insurance Co. v. Thompson, the policy of insurance contained a two-part provision. Part A of the policy provided as follows:

If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that rights. That person shall do: 1. Whatever is necessary to enable us to exercise our rights; and 2. Nothing after loss to prejudice them.

10. Id.
11. Id. at 222, 464 S.E.2d at 848.
12. Id. at 224, 464 S.E.2d at 849 (quoting Canal Ins. Co. v. Baldree, 489 F.2d 1393, 1394 (5th Cir. 1974)).
13. Id.
16. O.C.G.A. § 44-12-24 provides: "Except for those situations governed by Code Sections 11-2-210 and 11-9-402, a right of action is assignable if it involves, directly or indirectly, a right of property. A right of action for personal torts or for injuries arising from fraud to the assignor may not be assigned." O.C.G.A. § 44-12-24 (1982).
18. Id. at 632, 469 S.E.2d at 347.
Part B of the policy provided as follows: "If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall: 1. Hold in trust for us the proceeds of the recovery; and 2. reimburse us to the extent of our payment."\(^1\)

Considering Part B, the court held that it "merely" allows the insurance company to seek reimbursement if the insured recovers damages, and the court further held that Part B is not an assignment of a personal injury cause of action.\(^2\) The court went further to state that the insurer is entitled to reimbursement regardless of whether the insured is completely compensated for his losses by the recovery.\(^3\)

In the second case, *Southern General Insurance Co. v. Watson*,\(^4\) the enterprising plaintiff's attorney attempted to avoid the problem and to recover the medical payments benefits in addition to the recovery from the tortfeasor. However, his attempt failed. He planned to settle with the tortfeasor and then to sue for the medical payments benefits. Southern General had refused to pay the benefits based upon a reimbursement clause in its policy that was similar to the one in *Integon*.\(^5\) Southern General argued that if it paid the medical payments benefits, Watson would have to give them right back.\(^6\) The court of appeals agreed and reiterated its position in *Integon* by holding that Southern General could exercise its right to recover medical payments regardless of whether Watson received full compensation for his other damages.\(^7\)

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1. *Id.*
2. *Id.*
3. *Id.* at 632-33, 469 S.E.2d at 348.

   **Our Recovery Rights (Subrogation):** In the event of any payment under this policy, we are entitled to all the rights of recovery which the person to whom payment was made may have against another person or organization. You and any insured person must sign and deliver to us any legal papers relating to that recovery, and do whatever else is necessary to help us exercise those rights and do nothing after a loss to prejudice our rights. If there is a recovery we shall be reimbursed out of the recovery for expenses, costs, and any attorney's fees incurred in connection with this recovery. When a person has been paid damages by us under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for us to the extent of our payment.

6. 221 Ga. App. at 485, 471 S.E.2d at 559-60.
7. *Id.*
The "permissive driver" provisions of auto policies drew attention from the Georgia Court of Appeals and the Georgia Supreme Court this survey period. One case, *Prudential Property & Casualty Insurance Co. v. Walker*, involves the older policy language and presents the usual fact pattern that brings into play the "second permittee" doctrine. Under this doctrine if the use falls within the scope of the permission granted the first permittee, coverage is usually extended to a third person using the car without express permission to do so.

In *Walker*, the insured loaned his son a car for him to take his belongings from Roswell to school in Statesboro. He was to return the car to his father a few weeks later on Easter weekend. In the meantime, the son loaned the car to a friend to drive to Tallahassee, Florida, to be fitted for a bridesmaid's dress. On the trip to Tallahassee, this "second permittee" had a wreck. Although the son had permission to use the car while he was at school, he had been instructed not to loan the car to anyone and not to drive it to Florida, Savannah, or anywhere else.

The majority held that the use by the second permittee was not within the use or scope of permission given to the insured's son by his father. The use of the second permittee in this case exceeded the scope of permission extended by the insured to his son. However, Presiding Judge McMurray entered a strong dissent that provides a more accurate analysis of this transaction. Judge McMurray recognized that the son's permission extended to the use of the car as a substitute for his own vehicle and that the instructions given to the son not to go to Florida were aimed at getting him back home for Easter. Therefore, he reasoned, allowing the friend to use the vehicle in the interim to go to Florida did not defeat the purpose of this restriction by the father.

In fact, the minority found a jury question existed as to the "precise parameter of that scope of permission." A jury had tried the case and found, in response to a special interrogatory, that the second permittee

27. *Id.* at 85, 464 S.E.2d at 231. The language reads as follows: "You and a resident relative are insured . . . other people are insured while using your car . . . if you give them permission to use it. They must use the car in the way you intended." *Id.*
29. *Id.* at 663, 440 S.E.2d at 80.
31. *Id.* at 85, 464 S.E.2d at 231.
32. *Id.*
33. *Id.* at 89, 464 S.E.2d at 233 (McMurray, P.J., dissenting).
34. *Id.*
35. *Id.*, 464 S.E.2d at 234.
did have permission to use the vehicle. The majority reversed the judgment of the trial court by deciding that the trial court erred in failing to direct a verdict for the insurer.

In *Hurst v. Grange Mutual Casualty Co.*, the Georgia Supreme Court interpreted the newer "permissive driver" provision found in most auto policies. This new provision is stated as an exclusionary provision that withholds coverage for "any person . . . [using] a vehicle without a reasonable belief that [that] person is entitled to do so." This is the provision that the court of appeals has had considerable difficulty construing. The supreme court's analysis of the court of appeals decisions is particularly enlightening in that it amply demonstrates that court's propensity to decide cases on a fact-specific basis that fails to provide judicial guidance and predictability for the bench and bar. However, the supreme court's opinion provides a sound analysis of the policy provision and construes it to end the confusion generated by the court of appeals concerning the meaning and application of this exclusion.

The vehicle in *Hurst* was owned by Hurst. Hurst asked Adams to drive, and a collision occurred while Adams was driving. At the time of the accident, Adams' driver's license had been suspended or revoked for a period of time. Certiorari was granted on the question: "[W]hether the policy exclusion automatically excluded from coverage an unlicensed driver using the vehicle with the express permission of the insured who did not know that the driver was unlicensed." This new clause is couched in terms of entitlement rather than permission. This causes a shift in the inquiry from an objective determination concerning permission to mixed objective and subjective determination, which goes to the reasonableness of the user's belief of entitlement.

The court of appeals had held this provision "required two types of permission—that of the owner as well as that of the State." Therefore, as a matter of law, an unlicensed driver would not have a reasonable belief that he was entitled to drive the vehicle. However,

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36. *Id.* at 85, 464 S.E.2d at 231.
37. *Id.* at 86, 464 S.E.2d at 232.
39. *Id.* at 712, 470 S.E.2d at 661.
40. *Id.*, 470 S.E.2d at 660-61.
41. *Id.* at 712-13, 470 S.E.2d at 661.
42. *Id.* at 713, 470 S.E.2d at 661.
43. *Id.* at 714, 470 S.E.2d at 662.
the supreme court found the exclusion ambiguous because it was susceptible to three interpretations:

that the user must be authorized by law to drive in order to reasonably believe he is entitled to use the vehicle; that the user must have the consent of the owner or apparent owner in order to reasonably believe he is entitled to use the vehicle; or, that the user must have both consent and legal authorization in order to be entitled to use the vehicle.45

Following the usual rules, the court adopted an interpretation it considered least favorable to the insurer, holding: "The clause excludes from coverage only those nonowner drivers who use a vehicle without a reasonable belief that they had the permission of the owner or apparent owner to do so."46 The cases excluding unlicensed, nonowner drivers using the vehicle with the permission of the owner or apparent owner are therefore overruled.47 At last, we know what the exclusion means.

B. Uninsured Motorists

_Merastar Insurance Co. v. Wheat_48 presented a novel question regarding rejection of uninsured motorist coverage by an insured. The case was decided based upon a strained interpretation of the pertinent provisions of O.C.G.A section 33-7-11.49 Basically, under this statute,

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45. _Hurst_, 266 Ga. at 716, 470 S.E.2d at 663.
46. _Id._ at 716-17, 470 S.E.2d at 663-64.
47. _Id._
49. O.C.G.A. § 33-7-11(a)(1) provides:

No automobile liability policy or motor vehicle liability policy 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 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 exclusive of interests and costs which at the option of the insured shall be:

(A) Not less than $15,000.00 because of bodily injury to or death of one person in any one accident, and, subject to such limit for one person, $30,000.00 because of bodily injury to or death of two or more persons in any one accident, and $10,000.00 because of injury to or destruction of property of the insured;

(B) Not greater than the limits of liability because of bodily injury to or death of one person in any one accident and of two or more persons in any one accident, and because of injury to or destruction of property of the insured which is contained in the insured's personal coverage in the automobile liability policy or motor vehicle liability policy issued by the insurer to the insured.

all policies of automobile insurance issued in Georgia must contain uninsured motorist protection unless the coverage is rejected by the insured. The exception is when there is a renewal or supplemental policy issued "by the same insurer." Then, the requirement of obtaining a rejection is not necessary, and if the earlier policy did not provide coverage, it is not necessary to include uninsured motorist coverage in the supplemental or renewal policy.  

After previously rejecting uninsured motorist coverage, the plaintiff in Merastar obtained a policy from a subsidiary of North West National Life Insurance Co., NWNL General Insurance Co. ("NGIC") in 1988. At the time, North West Life also had another subsidiary, Provident General Insurance Co. ("PGIC"). In 1989, NGIC transferred its "obligations, liabilities, and rights" to PGIC.  

After 1990, PGIC changed its name to Merastar and "fully assumed all of NGIC's duties and liabilities under the policy." Judge Blackburn, writing for the majority of the court, divined that "the legislature intended that the assuming insurer stand in the place of the original insurer for the purposes of O.C.G.A. section 33-7-11(a)(3)." The result was that the insured was deprived of uninsured motorist coverage for the collision which occurred in 1993.  

We have certainly come a long way since the decision in Jones v. State Farm Mutual Insurance Co. However, Judge McMurray, in his dissent, saw through the haze. He criticized the majority for "disregarding well-established rules of statutory construction" and thereby

O.C.G.A. § 33-7-11(a)(3) provides:  

The coverage required under paragraph (1) of this subsection shall not be applicable where any insured named in the policy shall reject the minimum coverage in writing. However, the insurer shall not be required to issue any coverage for any amount greater than the minimum coverage unless the insured shall request in writing such higher limits. The coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

Id. § 33-7-11(a)(3).

51. Id. at 696, 469 S.E.2d at 883.
52. Id. at 695-96, 469 S.E.2d at 883.
53. Id. at 696, 469 S.E.2d at 883.
54. Id. at 696-97, 469 S.E.2d at 883-84.
55. Id. at 697, 469 S.E.2d at 884.
usurping the Legislature's function and altering their legislative policy. The language "the same insurer" does appear "clear," "unequivocal," "plain," and "unambiguous" as pointed out by Judge McMurray.

*Carter v. Bennett* also deals with construction of the uninsured motorist statute. *Carter* involves O.C.G.A. section 33-7-11(b)(2), or more specifically, the "phantom vehicle" provisions. This statute requires that when there is no contact with the phantom vehicle, the "description by the claimant of how the occurrence occurred" must be corroborated by an "eyewitness to the occurrence other than the claimant. In *Carter*, the plaintiff did not describe the accident as having been caused by a phantom vehicle because he did not remember any vehicles other than his and that of the known defendant, Bennett. Therefore, summary judgment was properly granted to the uninsured motorist carrier. The statute requires that the claimant include the phantom vehicle in his description of the occurrence. It is not sufficient to allege the involvement of the phantom vehicle in the complaint.

In *Georgia Farm Bureau Mutual Insurance Co. v. Kilgore*, personal service was not perfected upon the uninsured motorist carrier until two days after the running of the applicable statute of limitations. After reviewing the rules concerning service, relation back of service, and

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57. 220 Ga. App. at 698, 469 S.E.2d at 885 (McMurray, J., dissenting).
58. Id., 469 S.E.2d at 884.
61. O.C.G.A. § 33-7-11(b)(2) provides: A motor vehicle shall be deemed to be uninsured if the owner or operator of the motor vehicle is unknown. In those cases, recovery under the endorsement or provisions shall be subject to the conditions set forth in subsections (c) through (j) of this Code section and, in order for the insured to recover under the endorsement where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by the unknown person and the person or property of the insured. Such physical contact shall not be required if the description by the claimant of how the occurrence occurred is corroborated by an eyewitness to the occurrence other than the claimant.
63. 220 Ga. App. at 128, 469 S.E.2d at 280.
64. Id. at 130, 469 S.E.2d at 281.
due diligence, the Supreme Court of Georgia found that due diligence had been exercised because the lack of more prompt service was due to the "unavailability" of the insurer's registered agent.

The insurer, General Accident Insurance Company, raised a statutory question of interest in General Accident Insurance Co. v. Straws. Straws was involved in a collision with Waters, an Alabama resident, who told Straws at the scene that he did not have an insurance card and that he was not going to wait for the police to arrive. Waters showed him his driver's license and left the scene. Straws was unable to obtain service after several attempts and resorted to service by publication by following the procedure set forth in O.C.G.A. section 33-7-11(e). The case was tried by a jury, which returned a verdict for Straws. General Accident appealed, "argu[ing] that Straws failed to prove that Waters . . . had not deposited sufficient security under O.C.G.A. § 33-7-11(d)(2) to render him insured."

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70. 265 Ga. at 838, 462 S.E.2d at 715.
72. O.C.G.A. § 33-7-11(e) provides:
   In cases where the owner or operator of any vehicle causing injury or damage is known and either or both are named as defendants in any action for such injury or damages but the person resides out of the state, has departed from the state, cannot after due diligence be found within the state, or conceals himself to avoid the service of summons, and this fact shall appear by affidavit to the satisfaction of the judge of the court, and it shall appear either by affidavit or by a verified complaint on file that a claim exists against the owner or driver in respect to whom service is to be made and that he is a necessary or proper party to the action, the judge may grant an order that the service be made on the owner or driver by the publication of summons. A copy of any action filed and all pleadings thereto shall be served as prescribed by law upon the insurance company issuing the policy as though the insurance company issuing the policy were actually named as a party defendant. Subsection (d) of this Code section shall govern the rights of the insurance company, the duties of the clerk of court concerning duplicate original copies of the pleadings, and the return of service.
73. 220 Ga. App. at 496, 472 S.E.2d at 313-14. O.C.G.A. § 33-7-11(d)(2) provides:
   A motor vehicle shall not be deemed to be an uninsured motor vehicle within the meaning of this Code section when the owner or operator of such motor vehicle has deposited security, pursuant to Code Section 40-9-32, in the amount of $15,000.00 where only one person was injured or killed, $30,000.00 where more than one, or $10,000.00 for property damage.
Id. § 33-7-11(d)(2).
74. 220 Ga. App. at 496, 472 S.E.2d at 314.
The court of appeals reasoned that the issuance of the order for service by publication was a finding of due diligence. When the tortfeasor could not be found with due diligence, the court held that the statute should have been "broadly construed," that the tortfeasor should have been found to be an uninsured motorist, and that the "law" did not require Straws to prove that Waters did not make the security deposit contemplated by the statute.

An uninsured motorist insurer may file pleadings or take action in the name of the uninsured motorist or itself. The status of the company as a party to the case is determined by the "nature of its filing election." If the company files an answer in its own name, it becomes a named party to the case as a matter of law. In Hill v. Demery, Grange Mutual Casualty Company was the uninsured motorist carrier. Grange filed a motion to dismiss in its own name, raising a statute of limitations defense. This defense was asserted again in the name of Grange in a renewal action. When the motion was denied, Grange filed an application for appeal in the court of appeals in its own name, which was also denied. The case was called for trial, but Grange was not a named party in the case at that time. However, Grange defended the case in the name of the tortfeasor.

The court agreed with Grange that it did not become a named party in the case by filing the motion to dismiss and summary judgment, and that even if it became a party, once the issue was decided, it could elect to withdraw since there were no other issues as to its contractual

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75. Id. at 497, 472 S.E.2d at 314.
76. Id.
77. O.C.G.A. § 33-7-11(d) provides in pertinent part:
   In cases where the owner or operator of any vehicle causing injury or damages is known, and either or both are named as defendants in any action for such injury or damages, a copy of the action and all pleadings thereto shall be served as prescribed by law upon the insurance company issuing the policy as though the insurance company were actually named as a party defendant. If either the owner or operator of any vehicle causing injury or damages is unknown, an action may be instituted against the unknown defendant as "John Doe" and a copy of the action and all pleadings thereto shall be served as prescribed by law upon the insurance company issuing the policy as though the insurance company were actually named as a party defendant; and the insurance company shall have the right to file pleadings and take other action allowable by law in the name of "John Doe" or itself.
81. Id. at 225-26, 464 S.E.2d at 832.
The rule appears to be that the only way an uninsured motorist carrier unequivocally becomes a named party in the case is by filing an answer in its own name.

The dispute in Southern Guaranty Insurance Co. v. Premier Insurance Co. was over “stacking” of uninsured motorist benefits. The task of the court of appeals was to determine the priority of the coverages provided. Mrs. Buckner was driving a Datsun automobile owned by her husband at the time of the collision. Southern Guaranty insured this vehicle under a policy issued to Dance Expression, a dance school owned and operated by Mrs. Buckner as a sole proprietorship. Mrs. Buckner’s husband, Gerald Buckner, was the named insured under a policy issued by Premier. Gerald Buckner paid the premiums on both policies. The Datsun was Mrs. Buckner’s vehicle which she “drove all the time.”

Two methods of determining priority of coverage have been recognized. The first test, “the receipt of premium test,” was not considered appropriate in this case because Mr. Buckner paid the premiums on both policies. The other test, the “more closely identified with test,” was explained by the court to apply “to the relationship [between] the injured plaintiff to the policy rather than the circumstances of the injury to the policy.”

Following this guide, the court found that because Dance Expressions was a sole proprietorship, its obligations were Mrs. Buckner’s obligations and any of its benefits accrued directly to her. More importantly, it was not a separate and distinct entity capable of being the “true-named insured” under the policy. In reality, Mrs. Buckner was the “named insured” under the Southern Guaranty policy; therefore, Southern Guaranty provided the primary motorist coverage to Mrs. Buckner.

In 1987, the Supreme Court of Georgia decided that an insurer may not adjust the minimum coverage required by the uninsured motorist statute. This proposition was reiterated during the survey period in

82. Id. at 228, 464 S.E.2d at 833.
84. Id. at 413, 465 S.E.2d at 522.
85. Id.
87. 219 Ga. App. at 413, 465 S.E.2d at 522.
88. Id. at 414, 465 S.E.2d at 523 (quoting Travelers Indemn. Co. v. Maryland Casualty Co., 190 Ga. App. 455, 457, 379 S.E.2d 183, 185 (1989)).
89. Id. at 415, 465 S.E.2d at 523.
90. Id.
91. Id.
White v. Metropolitan Property & Casualty Insurance Co.\textsuperscript{93} The Metropolitan policy contained a provision which stated: "Relative does not include any person or the spouse of any person who owns a private passenger automobile."\textsuperscript{94} This language runs afeul of the language of the statute.\textsuperscript{95} Under the statute, "insured" includes all resident relatives of the named insured.\textsuperscript{96} Therefore, the supreme court held that Metropolitan's exclusion was of no effect because it was contrary to the statute.\textsuperscript{97}

Another case of statutory construction resulted in three separate opinions by a divided court of appeals. In Hinton v. Interstate Guaranty Insurance Co.,\textsuperscript{98} the specific inquiry was to determine if the plaintiff, Hinton, was entitled to coverage from her uninsured motorist carrier for damages she sustained as a result of a collision with a farm tractor being used to pull a mobile home on a county road.\textsuperscript{99}

Judge Birdsong, writing for the majority, found that the "farm tractor is not a motor vehicle for the purpose of uninsured motorist coverage."\textsuperscript{100} This is another strained statutory interpretation by the court of appeals. The court cited, but did not rely on O.C.G.A. section 40-1-1(33) for a definition of motor vehicle.\textsuperscript{101} This code section defines "motor" vehicle as "every vehicle which is self propelled."\textsuperscript{102} Instead, the court relied on O.C.G.A. section 33-34-2(1) and O.C.G.A. section 40-2-20(a) to determine that a "[farm] tractor was not a motor vehicle required to be registered under . . . (O.C.G.A. section 40-2-20) and, [therefore,] was not required to have liability insurance under O.C.G.A. section 33-34-2(1)."\textsuperscript{103} Somehow, the majority turned the inquiry into one concerning whether the tractor had to be registered.

\textsuperscript{93} 266 Ga. 371, 467 S.E.2d 332 (1996).
\textsuperscript{94} Id. at 372, 467 S.E.2d at 333.
\textsuperscript{95} O.C.G.A. § 33-7-11(b)(1)(B) provides:
"Insured" means 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; any person who uses, with the expressed or implied consent of the named insured, the motor vehicle to which the policy applies; a guest in such motor vehicle to which the policy applies; or the personal representatives of any of the above.
\textsuperscript{96} 266 Ga. at 373, 467 S.E.2d at 334.
\textsuperscript{97} Id.
\textsuperscript{99} Id. at 699, 470 S.E.2d at 293.
\textsuperscript{100} Id. at 701, 470 S.E.2d at 294.
\textsuperscript{101} Id. at 700, 470 S.E.2d at 293.
\textsuperscript{102} Id.
\textsuperscript{103} Id. at 701, 470 S.E.2d at 294.
However, this inquiry does not take into account the consequences of withholding uninsured motorist coverage from many citizens who would probably be shocked and amazed to find that they had no coverage in such a situation. This is exactly the type of result that the uninsured motorist statute attempts to avoid. The statement that “a farm tractor poses a far lesser degree of danger to those on public streets, roads and highways, and public policy provides no overriding reason to require [them] to be treated in the same manner as vehicles designed . . . [for that purpose],” certainly does not take into account the increasing burden of such vehicles using our road system.\textsuperscript{104} They may not be prevalent on I-75, but county roads are full of such vehicles during planting and harvesting season, and it is quite an enlightening experience, to say the least, to stop a rise late in the afternoon and see one almost sitting still covering both sides of the roadway in front of you.

The dissent seems to grasp the overall significance of this opinion. “The definition of motor vehicle in O.C.G.A. section 33-34-2(1), the Code section relied on by the majority, serves only to delineate those vehicles as to which the legislature has mandated liability insurance coverage. Applying that definition of motor vehicle in other contexts produces illogical results.”\textsuperscript{105} The minority would have the farm tractor considered a motor vehicle, thus entitling the plaintiff to the protection of the statute. Rightly so?

III. AGENTS LIABILITY

The insured’s negligent misrepresentation claim against her agent failed in \textit{Williams v. Fallaize Insurance Agency, Inc.}\textsuperscript{106} Williams had a jewelry business and purchased her insurance through Fallaize. The policy issued to her contained an exclusion for an unattended vehicle.\textsuperscript{107} Williams contended that she had requested on several occasions that Fallaize obtain coverage for her without such an exclusion, that Fallaize “falsely represented to her that [such] coverage was unavailable” to her, and that she relied upon that misrepresentation.\textsuperscript{108} She also argued that she did not attempt to find such coverage elsewhere because she relied on the Fallaize misrepresentation; thereby she

\textsuperscript{104} \textit{Id.}

\textsuperscript{105} \textit{Id. at 704, 470 S.E.2d at 296} (Johnson, J., dissenting).


\textsuperscript{107} The exclusion read as follows: “This policy does not insure loss of or damage to property: 3) in or upon any automobile or any other vehicle unless at the time the loss or damage occurs there is actually in or upon the vehicle, the Assured, or a person whose sole duty it is to attend the vehicle.” \textit{Id. at 412, 469 S.E.2d at 754}.

\textsuperscript{108} \textit{Id.}
suffered an unnecessary loss when thirteen thousand dollars worth of jewelry was stolen from her unattended vehicle.\textsuperscript{109}

The court applied the Restatement (Second) of Torts rule adopted by the Supreme Court of Georgia.\textsuperscript{110} The issue then boiled down to whether there was "justifiable reliance" by Williams upon the representation by Fallaize.\textsuperscript{111} To satisfy this requirement, it must be shown that the plaintiff exercised due diligence in relying on the information provided.\textsuperscript{112} After the loss, she obtained the coverage she wanted with little difficulty, but never took any action before the loss to remove the exclusion or obtain the desired coverage.\textsuperscript{113} Also, the policy issued to her through Fallaize included a page showing "ADDITIONAL COVERAGES" and listed thereon was "UNATTENDED VEHICLES."\textsuperscript{114} This clause showed that such coverage was available and that she "should have inquired further."\textsuperscript{115} These facts showed a lack of due diligence on Williams' part, defeating her claim. Would the result have been different had Williams grounded her claim against Fallaize upon negligent failure to procure coverage for her?

In Robinson v. J. Smith Lanier & Co.,\textsuperscript{116} the agent, J. Smith Lanier, failed to timely procure workers' compensation insurance for Robinson for which Robinson paid the premium. The next day, when coverage was to begin, one of their employees suffered a work-related injury.\textsuperscript{117} The Robinsons reported the claim to the carrier which denied coverage because the coverage did not become effective until three days after the injury, which was four days after the payment of the premium. The Robinsons paid the employee, while he was not working, $7,720 with checks marked "loan." They did not pay or promise to pay the employee

\begin{footnotesize}
\begin{itemize}
\item[109.] Id., 469 S.E.2d at 753.
\item[110.] See Robert & Co. Assocs. v. Rhodes-Haverty Partnership, 250 Ga. 680, 300 S.E.2d 503 (1983). The pertinent provisions of the rule are:
\begin{quote}
One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
\end{quote}
\item[111.] Id., 469 S.E.2d at 755.
\item[112.] Id.
\item[113.] Id., 469 S.E.2d at 755.
\item[114.] Id.
\item[115.] Id. at 414, 469 S.E.2d at 755.
\item[117.] Id. at 737, 470 S.E.2d at 273.
\end{itemize}
\end{footnotesize}
anything else.\textsuperscript{118} The employee never filed a workers' compensation claim,\textsuperscript{119} and the statute of limitations on the claim had run before the Robinsons filed the instant action.\textsuperscript{120}

The court of appeals applied the general rule that "when an insurance agent negligently fails to procure insurance, he steps into the shoes of the carrier and becomes 'liable for loss or damage to the limit of the agreed policy.'"\textsuperscript{121} Therefore, the agent's liability is "limited to those losses that would have been covered by the agreed policy."\textsuperscript{122} However, the agent is not liable unless it is shown that his negligent failure to procure caused the loss.\textsuperscript{123} The court found that Smith Lanier was not liable because there had been no loss caused by the failure to procure.\textsuperscript{124} The court thought that if any loss occurred, it would be caused by Robinson's failure to assert the statute of limitations defense to the workers' compensation claim.\textsuperscript{125} Hence, summary judgment was affirmed in favor of the agent.\textsuperscript{126}

IV. PROFESSIONAL LIABILITY INSURANCE

One sure way to lose errors and omissions coverage is to delay giving the insurer notice of a claim and then fail to communicate and cooperate with the insurer regarding the claim. This was made painfully clear to the insured agent who failed to place insurance and to the party harmed thereby in \textit{KHD Deutz of America Corp. v. Utica Mutual Insurance Co.}\textsuperscript{127} Duke, an agent of International Risk, failed to obtain insurance for KHD Deutz. KHD sued International Risk on December 4, 1992. International had its errors and omissions policy with Utica. The policy required the insured to notify Utica "as soon as practicable" of a claim or "fact or circumstance which may give rise to a claim."\textsuperscript{128} In addition, the insured had to "immediately forward" demands, summons, or process, and had to cooperate in the defense of the claim.\textsuperscript{129} Duke sent

\begin{itemize}
  \item \textsuperscript{118} Id.
  \item \textsuperscript{119} Id.
  \item \textsuperscript{120} Id. at 738, 470 S.E.2d at 274.
  \item \textsuperscript{121} Id., 470 S.E.2d at 273 (quoting Georgia Farm Bureau Mut. Ins. Co. v. Arnold, 175 Ga. App. 850, 851, 334 S.E.2d 733, 734 (1985)).
  \item \textsuperscript{122} Id., 470 S.E.2d at 273-74.
  \item \textsuperscript{123} Id. (quoting Peagler & Manley Ins. Agency v. Studebaker, 156 Ga. App. 786, 786, 275 S.E.2d 386, 386 (1980)).
  \item \textsuperscript{124} Id. at 738-39, 470 S.E.2d at 274.
  \item \textsuperscript{125} Id.
  \item \textsuperscript{126} Id. at 739, 470 S.E.2d at 275.
  \item \textsuperscript{127} 220 Ga. App. 194, 469 S.E.2d 336 (1996).
  \item \textsuperscript{128} Id. at 194, 469 S.E.2d at 337.
  \item \textsuperscript{129} Id., 469 S.E.2d at 337-38.
\end{itemize}
a letter to Utica on January 22, 1993, informing it that an incident had occurred that "might give rise to a claim." The letter did not specify the incident or party having the claim. International initiated no further contact with Utica regarding the claim.

Utica contacted Duke once. Duke assured Utica's attorney that the case would be resolved "within days." Thereafter, he would not return phone calls until about eighteen months later when he told Utica that there was a motion for summary judgment filed in the suit by KHD Deutz. He then met with Utica and executed a nonwaiver agreement. Utica assigned the case to counsel that day.

Usually, whether the insured has cooperated in meeting policy conditions is a jury issue. However, an "unexcused significant delay" in notifying the insurer may be unreasonable as a matter of law.

Summary judgment is also proper when the delay is "unjustifiable and unreasonable." The court found International Risk's actions "simply unreasonable" in this case. Likewise, the facts amply supported the view that the insured failed to cooperate as a matter of law.

Summary judgment for Utica was affirmed.

In Continental Casualty Co. v. H.S.I. Financial Services, Inc., the Georgia Supreme Court answered the following question certified from the Eleventh Circuit Court of Appeals: "Does a claim for a law partner's negligence with respect to supervising and mitigating a fellow partner's criminal act 'arise out of any dishonest, fraudulent, criminal or malicious act' within the meaning of this insurance policy exclusion?"

The short answer is "yes." The result is that the claim against the defaulting partner's partner was excluded from coverage under the firm's errors and omissions policy. One partner of the firm, Page, improperly withdrew money from the client's (HSI) escrowed funds. The other

130. Id., 469 S.E.2d at 338.
131. Id.
132. Id.
133. Id. at 195, 469 S.E.2d at 338.
134. Id.
135. Id.
138. Id. at 196, 469 S.E.2d at 339.
139. Id.
140. Id. at 198, 469 S.E.2d at 340.
142. Id. at 261, 466 S.E.2d at 6.
143. Id. at 263, 466 S.E.2d at 7.
two partners, Sevy and Henderson, were also sued for failure to supervise and ensure the proper accounting of HSI's funds. The policy provided coverage for "wrongful acts," and a wrongful act was defined as "any negligent act, error or omission." The clause in issue excluded "any dishonest, fraudulent, criminal, or malicious act by [an insured] or any of [an insured's] partners." The court read the exclusion to be plain and unambiguous. Further, it was clear to the court that the claim "arose out of" Page's actions because "but for Page's action, there could be no claim against Sevy and Henderson." The fact that the other attorneys may have been negligent "does not negate the plain effect of the policy's exclusionary clause."

V. HEALTH INSURANCE

_Celtic Life Insurance Co. v. Monroe_ involves the application of O.C.G.A. section 33-24-7. Monroe obtained a policy of health insurance from Celtic Life and stated in her application that she had received recent medical treatment consisting of a routine examination that was "[all great—results norm."

Her records showed she suffered from "hyperlipidemia, low back pain, degenerative disc disease leading to a herniated disc, and spondylosis."

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144. _Id._ at 260, 466 S.E.2d at 5.
145. _Id._ at 261, 466 S.E.2d at 5.
146. _Id._ at 262, 466 S.E.2d at 6.
147. _Id._
150. O.C.G.A. § 33-24-7 provides:
(a) All statements and descriptions in any application for an insurance policy or annuity contract or in negotiations for such, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. (b) Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless: (1) Fraudulent; (2) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or (3) The insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the premium rate as applied for or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been known to the insurer as required either by the application for the policy or contract or otherwise.

152. _Id._
expenses for gall bladder surgery. The court felt that Celtic would have refused to issue the policy had she not concealed information relevant to her medical condition; therefore, Celtic was entitled to summary judgment. The statute does not require that the information concealed be connected to the cause of the loss.

VI. COMMERCIAL GENERAL LIABILITY POLICIES

Boomershine Pontiac obtained a general commercial policy from Globe Indemnity Company that provided coverage for employee dishonesty. In Boomershine Pontiac-GMC Truck, Inc. v. Globe Indemnity Co., Boomershine sued to recover losses it had suffered from that particular cause. The validity of the claim depended upon whether the losses were “discovered” within one year from the end of the policy period.

Since Georgia courts have “only rarely” addressed this issue, the court of appeals found persuasive authority in a federal case decided in North Carolina. Discovery requires knowledge “that would lead a reasonable person to assume a loss exists.” Although it is not necessary to know the details of loss, such as the amount or the specific manner in which the loss was caused, the knowledge must “rise above mere suspicion of loss.” However, if “inefficient business procedures or discrepancies in accounts are as consistent with employees' integrity as with their dishonesty, such circumstances do not constitute a 'discovery' under the policy terms.” After such a statement of the rule, it comes as no surprise to learn that “a jury must determine this issue.”

In Isdoll v. Scottsdale Insurance Co., Scottsdale Insurance insured Forest Park, Georgia. Isdoll was an inmate in the city jail and was sexually assaulted by her jailer, McBerry. Isdoll sued McBerry and Forest Park and obtained judgment. The suit by Isdoll against Scottsdale was filed to collect the portion of the judgment that had not

153. Id. at 38-39, 467 S.E.2d at 361-62.
154. Id. at 39, 467 S.E.2d at 362.
155. Id. at 39-40, 467 S.E.2d at 362.
157. Id. at 843, 466 S.E.2d at 916.
158. Id.
159. Id.
160. Id., 466 S.E.2d at 917.
161. Id. at 843-44, 466 S.E.2d at 917.
162. Id. at 844, 466 S.E.2d at 917.
163. Id. at 846, 466 S.E.2d at 919.
been paid in a settlement with Forest Park. The policy provided coverage for "WRONGFUL ACT(S)" resulting in "PERSONAL INJURY caused by an OCCURRENCE." "PERSONAL INJURY" was defined as "assault and battery" and "violation of [a person's] civil rights protected under 42 U.S.C. § 1981 et sequential or State Law." The policy also contained an exclusion for "damages arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any INSURED . . . ."

This exclusion was found "repugnant" to the endorsement providing coverage for personal injury (assault and battery and civil rights violations). Since the provision most favorable to the insured was controlling, it was applied. Therefore, Isdell was not barred from recovery by the exclusion.

In Stratton & Co. v. Argonaut Insurance Co., the court of appeals shed some light on some policy language that has left many practitioners scratching their heads in an attempt to discern its meaning. Stratton obtained from Argonaut a comprehensive general liability policy with a broad form property damage endorsement. Argonaut agreed to pay "all sums which the insured shall become legally obligated to pay as damages because of property damage to which this insurance applies, caused by an occurrence." An exclusion stated that "the insurance does not apply to 'property damage to the named insured's products.'" Stratton was a building contractor who agreed to construct an office building and parking deck. Disputes arose, and Stratton left the job. There were a number of complaints regarding Stratton's work. Stratton was sued, and Argonaut denied coverage and refused to defend Stratton. Stratton settled the lawsuit and filed the instant case seeking reimbursement from Argonaut. As the court noted, "[T]here is no Georgia case law specifically addressing the issue of whether a building should be considered the 'product' of its builder, or in this case,

165. Id. at 516-17, 466 S.E.2d at 49.
166. Id. at 517, 466 S.E.2d at 50.
167. Id.
168. Id.
169. Id. at 518, 466 S.E.2d at 50.
171. Id., 466 S.E.2d at 51.
173. Id. at 655, 469 S.E.2d at 547.
174. Id.
175. Id.
176. Id. at 654, 469 S.E.2d at 547.
177. Id., 469 S.E.2d at 546-47.
of the general contractor responsible for the building's construction." The court then concluded that "real property, like the building and parking deck here, are not 'products' and thus are not excluded from coverage." The court also held that coverage was not barred by the "work performed" or "completed operations hazard" exclusion in the policy. This completed operations endorsement "narrows the exclusions found in the basic policy so as not to preclude coverage regarding faulty work or materials performed or supplied by subcontractors."

VII. HOMEOWNERS POLICIES

Two separate shooting incidents came before the court of appeals on the issue of whether the shooter's homeowner's policy provided coverage for the incident. In the first case, Georgia Farm Bureau Mutual Insurance Co. v. Lane, the shooter, Lane, shot in self-defense.

The court thought summary judgment for the insurer was proper based upon the shooter's testimony that he aimed the gun at the assailant's right side, with the intent to shoot him. The shooter acknowledged that his gun was capable of inflicting serious bodily harm, but also stated that he pulled the trigger only to get the assailant to stop shooting at him. Since the evidence showed that the shooter "intended to cause injury to [the assailant], the fact that he may have acted in self-defense is insufficient to vitiate the element of intent so as to remove such act from the ambit of the exclusionary clause." This opinion is somewhat of a departure from an earlier case which found a jury question existed.

A kicking incident was the subject of the other case, Georgia Farm Bureau Mutual Insurance Co. v. Hurley. In Hurley, the court opined that "the type and degree of force employed by the insured . . . could reasonably be viewed . . . with the absence of any intention on his part

178. Id. at 655, 469 S.E.2d at 547.
179. Id. at 656, 469 S.E.2d at 547.
180. Id., 469 S.E.2d at 548.
181. Id. at 657, 469 S.E.2d at 548.
183. Id. at 737, 466 S.E.2d at 272.
184. Id., 466 S.E.2d at 273.
185. Id.
to cause injury."188 The gun seemed to make the difference in the outcome of these two cases.

In the other shooting case, *Southern Guaranty Insurance Co. v. Phillips,*189 the shooter had entered a plea of "guilty but mentally ill" pursuant to a plea bargain approved by the family of the deceased.190 The court avoided the intentional act exclusion issue after deciding the case based upon the definition of "occurrence" in the policy.191 The policy defined "occurrence" as "accident," meaning "an event which takes place without one's foresight or expectation or design."192 Upon the following facts the court determined that the shooting was not accidental; therefore, there was no coverage for Phillips under his homeowners policy.193

Phillips waited for his wife and confronted her. When she turned to walk away, he shot her in the back, severing her spine. As she lay prone on the ground, he shot her four more times. Then he shot himself in the chest, reloaded his pistol, and shot himself two more times. He survived. She did not. He said he was trying to commit suicide.194 Although the trial court denied the insurer's motion for summary judgment, the court of appeals directed that summary judgment be entered for the insurer.195 The bothersome thing about this case is that there is no discussion of the effect of the mental illness defense and the plea entered in the criminal case. If the shooter was incapacitated to the extent that his plea was provident, did he have the capacity to act with foresight, expectation, or design? Does the saying "hard facts made bad law" apply here?

Two cases decided during the survey period raise the question of whether a misrepresentation defense is viable to a homeowner's insurer. In *Nationwide Mutual Fire Insurance Co. v. Wiley,*196 the insurer raised the defense of misrepresentation of the insured's interest in the property. The misrepresentation was made in the proof of loss, after the fire.197 The court of appeals applied the rule of estoppel because of the agent's knowledge and held that the insurer was not entitled to a

188. *Id.* at 548, 379 S.E.2d at 422.
190. *Id.* at 461-62, 469 S.E.2d at 228.
191. *Id.* at 462-63, 469 S.E.2d at 229.
193. *Id.* at 462-63, 469 S.E.2d at 229.
194. *Id.* at 461, 469 S.E.2d at 228.
195. *Id.* at 463, 469 S.E.2d at 229.
197. *Id.* at 442, 469 S.E.2d at 303.
directed verdict on this defense. Until this case, the estoppel rule applied to misrepresentation in the application for insurance. The court also placed a requirement on the insurer to show that the false statements of the insured "were made willfully and intentionally for the purpose of defrauding the insurer," although the misrepresentation in this case went directly to the insured's interest in the property.

In Graphic Arts Mutual Insurance Co. v. Pritchett, the husband completed the application for insurance and indicated that he had no insurance policies canceled within three years of the application. In fact, there had been three cancellations, "including a policy with Utica Mutual . . ., the corporate parent of Graphic Arts."

The court applied the "composite knowledge" rule and found Graphic Arts estopped from relying upon the misrepresentation as to the Utica policy. Nevertheless, the court applied O.C.G.A. section 33-24-7 to the misrepresentation of the other cancellations and determined that Graphic Arts was entitled to summary judgment. The court went further to find that the spouse of the person making the misrepresentation was also barred from recovery. This decision was based upon a finding that the husband was acting as the wife's agent in making the application for insurance and that she had ratified his actions "relating to applying for the policy at issue by demanding its benefits."

The Supreme Court of Georgia, by granting certiorari in the case of Roland v. Georgia Farm Bureau Mutual Insurance Co., has joined the long standing effort of the court of appeals to construe the "residence premises" provision found in most homeowner's insurance policies.

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202. Id. at 430-31, 469 S.E.2d at 201.
203. Id. at 431, 469 S.E.2d at 201 (citing Walker v. State, 89 Ga. App. 101, 105, 78 S.E.2d 545, 549 (1953)).
204. Id.
205. Id. at 433-34, 469 S.E.2d at 203.
206. Id. at 433, 469 S.E.2d at 203.
207. Id. at 433-34, 469 S.E.2d at 202-03.
209. The typical provision reads as follows:

We cover: 1. Your dwelling, including the structures attached to it, at the residence premises. The dwelling must be used principally as a private residence. Residence premises means the one or two family dwelling where you reside,
The supreme court found the provision unambiguous and found it to require the "named insured or spouse" to live at the insured premises in order to maintain coverage under the policy.\textsuperscript{210} However, the court allowed a spouse who was not living in the residence (she was separated from her husband, but no divorce had been granted, and he lived in the house at the time of the fire) to recover.\textsuperscript{211} Applying the "reasonable anticipation" rule of construction, the court determined that the wife could have reasonably anticipated that her coverage continued until the end of her marriage if she or her husband lived in the house.\textsuperscript{212}

This "residence premises" clause has resulted in a good bit of litigation over its meaning for some time.\textsuperscript{213} Maybe the supreme court's finding the clause unambiguous will be the beacon that will lead to some predictability of construction by the court of appeals in the future.

VII. MISCELLANEOUS

The Georgia Supreme Court in \textit{Tippins Bank & Trust Co. v. Southern General Insurance Co.}\textsuperscript{214} decided that O.C.G.A. section 33-24-46 does not require the insurer to notify a mortgagee when coverage is ended because of the insured's failure to pay premiums or because of the insured's failure to act.\textsuperscript{215} The notice is required only when the termination of coverage is due to the "unwillingness or refusal to renew" by the insurer.\textsuperscript{216}

VIII. CONCLUSION

It is very difficult to glean a message from the court of appeals analysis and decisions concerning insurance issues during this survey period. The most that can be said is that the decisions are fact specific or case specific, and apply retrospectively to the case being decided rather than having prospective benefits to other litigants. Practitioners, clients, and superior court judges yearn for predictability from the

including the building, the grounds and other structures on the grounds, and which is described in the declarations.

\textsuperscript{210.} 265 Ga. at 777, 462 S.E.2d at 625.
\textsuperscript{211.} \textit{Id.} at 777-78, 462 S.E.2d at 625.
\textsuperscript{214.} 266 Ga. 97, 464 S.E.2d 381 (1995).
\textsuperscript{215.} \textit{Id.} at 99, 464 S.E.2d at 383.
\textsuperscript{216.} \textit{Id.}
decisions of the appellate courts. This has not been forthcoming during the survey period. Whether the lack of this characteristic is due to heavy workload, failure to hear meaningful oral argument, or lack of proper presentation by the attorneys practicing before the court is not known. However, to reduce the number of future cases coming to the appellate courts, the current decisions must be clear and precise and provide guidance for future litigators as well as those directly before the court. Maybe adding a new panel to the court of appeals, going back to the days of meaningful oral argument, and having more seasoned or better prepared members of the Bar appear before the court will provide the opportunity for change.