principal case, the policy could be voided either because of the effect of the misrepresentation on the carrier's rights as stated above, or under the provisions of the State Insurance Code in general.

In conclusion, it would seem that while the result is probably desirable in this case, the reasoning used to reach such a conclusion does not make good law. The intent and purpose of the assigned risk plan is to open a market for those entitled to insurance but unable to procure coverage on the open market.[14] However, this desire to alleviate discrimination against certain risks should not itself develop into a pattern of discrimination against the insurer. For the assigned risk plan to function, or for any insurance plan to operate efficiently, the insurer must be informed as to the risk covered and the hazard insured against. If the courts are to allow misrepresentations to be made simply because the insurer is required to accept the applicant, it would seem then that any misrepresentation would be irrelevant where the only consequence is that an inadequate premium is charged.

E. WAYNE WALLHAUSEN

INSURANCE—AUTOMOBILE LIABILITY COVERAGE—AUTOMATIC INSURANCE CLAUSE

An action to determine coverage provided by an "automatic insurance clause"[1] was brought on an automobile liability insurance policy. The vehicle described in the policy, a 1949 Studebaker truck used in insured's business, broke down and had to be towed to a garage for repairs. The insured subsequently borrowed a 1953 Chevrolet truck to use in connection with his business and later acquired title to it. After title was acquired to the Chevrolet truck but before title was relinquished to the Studebaker truck, the former truck was involved in a collision.

At the time of the collision the 1949 Studebaker truck was still undergoing repairs. After it was damaged, it was never used in insured's business; the only time it was ever operated was in order to transport it from the repair shop to service station lot where a "For Sale" sign was placed on it. The Studebaker truck remained on the service station lot until it was sold some two months later.

The trial court entered judgment on a jury verdict for the insured, and the Superior Court of Pennsylvania affirmed the trial court's decision.[2]

14. RULES AND REG. OF THE STATE OF GEORGIA §120-2-14-.09 (1967).

1. *See generally* Annot., 34 A.L.R.2d 939 (1954); 7 J. APPLEMAN, INSURANCE LAW AND PRACTICE §4293 (1962); 12 R. ANDERSON, COUCH ON INSURANCE 2d §45:209 (2d ed. 1964).

2. Filaseta v. Pennsylvania Threshermen & Farmers' Mut. Cas. Ins. Co., 209 Pa. Super. 322, 228 A.2d 18 (1967).

The issue to be resolved in the instant case is whether or not the insurance policy in question covered the newly acquired Chevrolet truck. This policy provided coverage for a newly acquired vehicle if it qualified under the following language of the policy: " '(4) Newly Acquired Automobile—an automobile, ownership of which is acquired by the named insured or his spouse if (1) it replaces an automobile owned by either and covered by this policy. . . .' "[3] Did the Chevrolet truck replace the Studebaker truck? The word "replace" has been defined: "to take the place of; serve as a substitute or successor of; to supplant."[4]

The courts have had some difficulty determining coverage under the aforementioned clause when the insured retains title to the vehicle recited in the policy. In *Mitchum v. Travelers Indem. Co.*[5] the car described in the insurance policy was delivered to a dealer for storage and possible sale. Since the insured retained title to the original car and since the car was in working order, the insured might have had access to it; the court concluded that the newly acquired car did not replace the old one. In a case where the insured acquired an automobile but retained his truck after purchasing the automobile and operated the truck for at least another four weeks, the court held that the newly acquired automobile was not a "replacement" for the truck described in the insurance policy.[6]

One of the most liberal constructions of the "automatic coverage clause" was construed by the court in *Brescoll v. Nationwide Mut. Ins. Co.*[7] where the newly acquired vehicle was regularly and continuously used by the insured instead of the vehicle recited in the insurance policy which, after undergoing repairs, was used only for transportation incident to its projected sale. The court held that the newly acquired vehicle did replace the old one, and the fact that the old vehicle was retained and durable for six weeks before the collision involving the new vehicle was not significant where the new vehicle was actually purchased to replace the old one. In other words, the intent to replace the old car had to be present when the new car was acquired.[8]

Some courts have implied that the newly acquired vehicle must be used for the same purpose for which the replaced vehicle had been previously used.[9] In *Ray v. State Farm Mut. Auto. Ins. Co.*,[10] the mere fact that the new vehicle was a pickup truck and the old vehicle was an automobile did not deter the court from finding that the pickup truck replaced the auto-

3. *Id.* at 323, 228 A.2d 18 (1967).
4. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1925 (3d ed. 1961). *See also* Nationwide Mut. Ins. Co. v. Mast, 52 Del. 127, 153 A.2d 893 (1959).
5. 127 F.2d 27 (4th Cir. 1966).
6. Nationwide Mut. Ins. Co. v. Fleming, 257 F. Supp. 261 (D.S.C. 1966).
7. 116 Ohio App. 537, 189 N.E.2d 173 (1961).
8. Kelly v. State Farm Mut. Ins. Co., 256 F. Supp. 978 (E.D. Tenn. 1966).
9. Merchants Mut. Cas. Co. v. Lambert, 90 N.H. 507, 11 A.2d 361 (1940). *See also* 127 A.L.R. 483 (1940).
10. 152 So.2d 566 (La. App. 1963).

mobile where the automobile was completely inoperative and was never used after acquisition of the pickup truck. The pickup truck was purchased as a means of transportation to replace the transportation provided by the automobile.

Because of our affluent and fast-paced society where almost every family owns a car, automatic insurance clauses in automobile liability policies are necessary. They are intended to meet the necessity for maintaining coverage in the situation resulting from the recognized custom among insured owners of acquiring other cars by replacement and new purchases during the life of their policies.[11] The issues resolved in the instant case[12] have yet to be litigated in the Georgia courts, but the holding is a just and fair one and is followed by most jurisdictions where this problem has arisen.

EDWIN S. VARNER, JR.

INSURANCE—RIGHT OF RECOVERY UNDER LIFE POLICY—INSURED KILLED WHILE COMMITTING A FELONY

A recent case[1] brought before the Third District Court of Appeals of Florida involved a situation of first impression in that state. The insured under a group life insurance policy which did not contain a violation of law clause was killed while in the commission of an armed robbery. The granting of a summary judgment in favor of the administratrix of the insured's estate was affirmed, the court holding that the public policy of Florida would not preclude such recovery.

While there does not seem to be a clear-cut majority rule in this country, the court in *Home State Life Ins. Co. v. Russell*[2] stated:

> In the absence of any provision in the policy excepting such a risk, the insurer is liable, though the insured was killed while committing a felony, if it does not appear that the policy was obtained in contemplation of the commission of a felony and the consequent danger.[3]

In the *Home State* case the court refused to hold that the public policy of Oklahoma precluded a beneficiary's recovery on a life insurance contract where the insured was killed in the commission of a felony, and where the contract did not exclude such cause of death. The court reasoned that it

11. Mullen v. Farm Bureau, 21 Ill. App. 2d 280, 157 N.E.2d 679 (1959).
12. Filaseta v. Pennsylvania Threashermen & Farmers' Mut. Cas. Ins. Co., 209 Pa. Super. 322, 228 A.2d 18 (1967).
1. Valley Forge Life Ins. Co. v. Lawrence, 196 So.2d 759 (Fla. 1967).
2. 175 Okla. 492, 53 P.2d 562 (1936).
3. *Id.* at 493, 53 P.2d at 563.