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Automobiles - Insurance - The Requirements of North Dakota's Financial Responsibility Laws Are Applicable to All Automobile Liability Insurance Policies

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AUTOMOBILES — INSURANCE — THE REQUIREMENTS OF NORTH DAKOTA'S FINANCIAL RESPONSIBILITY LAWS ARE APPLICABLE TO ALL AUTOMOBILE LIABILITY INSURANCE POLICIES

Norval Fliflet, while driving a Plymouth Fury III automobile owned by his brother-in-law, Daniel Bye, was involved in a car accident with a vehicle owned and driven by Steven Richard.[1] At the time of the accident an insurance policy, issued by State Farm Insurance to Merlin Lende, existed on the Fury III.[2] State Farm was unaware, until after the accident occurred, that Lende did not own the car.[3] After learning that Lende was not the owner of the Fury III, State Farm rescinded the insurance policy and denied liability coverage for the accident.[4] Richard commenced a lawsuit against Fliflet and Bye for damages that he sustained in the accident.[5] Fliflet subsequently served a third party summons and complaint on State Farm, which again denied liability and stated that the insurance policy had been rescinded on the basis of Lende's misrepresentation of ownership.[6] The district court determined

1. Richard v. Fliflet, 370 N.W.2d 528, 529 (N.D. 1985).

2. *Id.* In applying for the insurance policy, Lende stated that he owned the Fury III. *Id.* The application was falsified by Lende because of Daniel Bye's previous conviction for driving while intoxicated. *Id.* at 536 (VandeWalle, J., dissenting). The falsification was an effort to avoid paying the higher insurance premiums that would result if the insurance company were aware of Bye's previous conviction. *Id.*

3. *Id.* at 529.

4. *Id.* State Farm denied liability on the basis that the insurance contract had been rescinded because of Lende's misrepresentation of ownership and concealment of a material fact. *Id.* at 530. State Farm returned to Mr. Lende the entire premium he had paid. *Id.* at 529.

5. *Id.* Richard commenced the action in the East Central Judicial Court of Cass County. *Id.* at 528. He sought damages of $2,000. *Id.* at 529. At the time of the accident, Fliflet had an insurance policy with Dairyland Insurance Company covering his 1970 Plymouth. *Id.* at 529-30. The policy required Dairyland to provide Fliflet with legal assistance although the insured 1970 Plymouth was not involved in the accident. *Id.* at 530.

6. *Id.* Fliflet claimed a right of indemnification by virtue of State Farm's obligations under the policy issued to Mr. Lende. *Id.* The action between Fliflet and Richard was settled for $1,100. *Id.* The parties agreed that whichever insurance company was obligated to provide coverage would pay Richard. *Id.* Fliflet's third party action against State Farm was submitted to the district court on stipulated facts. *Id.* The district court dismissed the action, and Fliflet appealed. *Id.*

that State Farm had properly rescinded the policy because of Lende's misrepresentation of a material fact and because the policy was not issued pursuant to North Dakota's financial responsibility laws.[7] The dispositive issue on appeal was whether State Farm could, on the basis of Lende's misrepresentation in his insurance application, rescind the policy after the occurrence of the accident.[8] The North Dakota Supreme Court *held* that subsection 39-16.1-11(6) (a) of the North Dakota Century Code, which prohibits an insurer from rescinding an insurance policy after the occurrence of injury or damage, applies to all voluntarily purchased motor vehicle liability insurance policies, provided the policies afford substantially the same coverage as required by North Dakota's financial responsibility laws.[9] Therefore, the court concluded that State Farm could not, after the accident, properly rescind the policy it had issued to Lende covering the Plymouth Fury III.[10] *Richard v. Fliflet,* 370 N.W.2d 528 (N.D. 1985).

The problem of compensating victims of automobile traffic accidents has been the subject of public concern for over fifty years.[11] Drivers have partially solved the problem by voluntarily obtaining automobile liability insurance.[12] An insured driver's liability insurance compensates the victims of any accident involving the insured.[13] Although voluntarily purchased liability policies have mitigated the problem of compensation, the issue has

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7. *Id.* Chapter 39-16.1 of the North Dakota Century Code contains a portion of North Dakota's financial responsibility law. *See* N.D. CENT. CODE § 39-16.1-11 (Supp. 1985). Subsection 39-16.1-11(6)(a) of the North Dakota Century Code provides as follows:

> 6. Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:
>
> a. The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

Id. § 39-16.1-11(6)(a) (Supp. 1985).

8. *Fliflet,* 370 N.W.2d at 530.

9. *Id.* at 535.

10. *Id.*

11. *See* Laufer, *Insurance Against Lack of Insurance? A Dissent from the Uninsured Motorist Endorsement,* 1969 DUKE L.J. 227, 230-31 (a discussion of early responses to the problem of compensating victims of accidents involving uninsured motorists).

12. *Id.* at 227. In 1969, an estimated 85% of the passenger automobiles in the United States were covered by liability insurance. *Id.*

13. *See* 12 G. COUCH, R. ANDERSON & M. RHODES, CYCLOPEDIA OF INSURANCE LAW § 45:1, at 219 (2d rev. ed. 1981) [hereinafter COUCH]. Because of the disastrous effects that are often the result of motor vehicle accidents, policies are liberally construed to provide coverage whenever reasonably possible. *Id.; see* Travelers Mut. Casualty Co. v. Rector, 138 F.2d 396, 402 (8th Cir. 1943) (policy to be construed most favorably for the insured); Howard v. American Serv. Mut. Ins. Co., 151 So. 2d 682, 686 (Fla. 1963) (same).

remained a matter of great public concern.[14] In response to this concern, state legislatures have enacted statutes designed to regulate liability insurance.[15] Compulsory insurance,[16] no-fault insurance,[17] and financial responsibility laws[18] are the most widely enacted legislative schemes designed to assure that automobile drivers are insured.[19]

The enactment of financial responsibility laws was the first legislative attempt to provide adequate compensation to victims of automobile accidents.[20] Financial responsibility acts have three basic objectives: (1) to prevent or decrease accidents by eliminating or segregating the bad driver; (2) to increase the number of insured drivers and compel the poor driver to obtain insurance; and (3) to satisfy more claims arising out of automobile accidents.[21] Although the financial responsibility laws adopted by various states differ in scope and applicability, all attempt to provide compensation to innocent victims of financially irresponsible drivers.[22]

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14. *See, e.g.*, Milbank Mut. Ins. Co. v. United States Fidelity & Guar. Co., 332 N.W.2d 160, 165-66 (Minn. 1983) (public policy dictates a liberal construction of statutes affording protection to traffic accident victims); Travelers Indem. Co. v. Watkins, 209 So. 2d 630, 634 (Miss. 1968) (legislative policy is to protect the public and provide insurance coverage when persons are injured on the state's highways); Gross v. Joecks, 72 Wis. 2d 583, 590, 241 N.W.2d 727, 730 (1976) (financial responsibility laws are intended to protect traffic accident victims from financial hardship).

15. *See, e.g.*, N.D. CENT. CODE §§ 26.1-25-01 to -05 (Supp. 1985) (regulation of insurance rates).

16. *See generally* 12A COUCH, *supra* note 13, § 45:679. States with compulsory liability insurance laws require all motorists to carry liability insurance before operating a motor vehicle on the public highways of the state. *Id.; see, e.g.*, COL. REV. STAT. § 10-4-705 (1973 & Supp. 1985); N.Y. VEH. & TRAF. LAW § 312 (McKinney 1970 & Supp. 1986); N.D. CENT. CODE § 39-08-20 (Supp. 1985).

17. *See generally* 12A COUCH, *supra* note 13, § 45:661. The purpose of no-fault insurance is to compensate all victims of traffic accidents regardless of fault. *Id.* at 245. Statutes generally provide compensation for the victim's out-of-pocket medical expenses and loss of earnings as the expenses accrue. *Id.* Thus the victim is compensated without having to pursue a tort claim. *Id.* As of 1981, twenty-four states had adopted some form of a no-fault automobile insurance statute. *Id.; see, e.g.*, COL. REV. STAT. § 10-4-701 to -723 (1973 & Supp. 1985); N.Y. INS. LAW § 5101 to 5108 (McKinney 1985); N.D. CENT. CODE § 26.1-41-06 (Supp. 1985).

18. *See generally* 12A COUCH, *supra* note 13, § 45:721. Financial responsibility laws are designed to discourage careless driving and mitigate its consequences by requiring proof of financial responsibility prior to the granting of a driver's license. *Id.* at 351. Financial responsibility laws also authorize revocation of a driver's license for failure to provide proof of financial responsibility after the occurrence of an accident. *Id.* Financial responsibility laws are distinguishable from compulsory liability insurance laws, because financial responsibility laws are generally applicable only after a person has been involved in an accident. *Id.* § 45-679, at 315; *see, e.g.*, COL. REV. STAT. §§ 42-7-101 to 42-7-510 (1984 & Supp. 1985); N.Y. VEH. & TRAF. LAW §§ 330 to 368 (McKinney 1970 & Supp. 1986); N.D. CENT. CODE chs. 39-16, 39-16.1 (1980 & SUPP. 1985).

19. *See* 12A COUCH, *supra* note 13, §§ 45:661, 45:721.

20. *Id.* § 45:721, at 361. *See generally* Legislation, *A Survey of Financial Responsibility Laws and Compensation of Traffic Victims: A Proposal for Reform*, 21 VAND. L. REV. 1050 (1968) (discussing the operation and effect of financial responsibility laws and suggestions for reform).

21. Legislation, *supra* note 20, at 1051. The author states that the insurance industry vigorously promoted the enactment of financial responsibility laws in an effort to avoid widespread enactment of compulsory insurance laws. *Id.* Insurance companies feared that compulsory insurance laws would result in excessive government control of the industry, inadequate fixed policy fees, and the inability of insurance carriers to exclude bad risk drivers from coverage. *See* Grad, *Recent Developments in Automobile Accident Compensation*, 50 COLUM. L. REV. 300, 313-14 (1950).

22. Legislation, *supra* note 20, at 1052-54. One author has stated that "[t]he purpose of a financial responsibility act is to furnish compensation for innnocent persons and members of the general public who are injured by the negligent operation of automobiles, and to protect them from

In North Dakota a driver of a motor vehicle that is involved in an accident which results in death or damages exceeding six hundred dollars must report the accident to law enforcement authorities.[23] The accident reports are forwarded to the State Highway Commissioner who determines whether the persons involved in the accident will be required to post security as proof of their ability to respond to any damages for which they may be found liable.[24] The provisions of section 39-16-05 of the North Dakota Century Code require individuals involved in reportable accidents to either post security or purchase a liability insurance policy that provides coverage equivalent to the required security.[25] The policy must be certified as proof of financial responsibility, and it must satisfy the financial responsibility requirements contained in chapter 39-16.1 of the North Dakota Century Code.[26] Section 39-16-05 is not applicable, however, to a person who qualifies for a statutory exemption, such as the existence of an acceptable liability insurance policy at the time of a vehicular accident.[27] Failure to

financially irresponsibile persons." 12A COUCH, *supra* note 13, § 45:723, at 365-66 (footnote omitted). A report prepared by the North Dakota Legislative Research Committee stated that financial responsibility laws were enacted for the purpose of compensating innocent victims of traffic accidents. NORTH DAKOTA LEGISLATIVE RESEARCH COMMITTEE, REPORT TO THE LEGISLATIVE ASSEMBLY OF 1967, at 93 (1967).

23. N.D. CENT. CODE § 39-08-09 (Supp. 1985).

24. *Id.* § 39-16-05(1). Subsection 1 of § 39-16-05 of the North Dakota Century Code gives the State Highway Commissioner the authority to suspend the license of drivers involved in reportable accidents. *Id.* The subsection provides, in relevant part, as follows:

> The commissioner . . . shall suspend the license of each driver of each vehicle in any manner involved in the accident. . . . However, if a driver . . . involved in the accident purchases an insurance policy with at least the amount of coverage required by this section, and files proof and satisfies financial responsibility requirements thereof with the commissioner, that driver may retain the license or privilege until the driver has accepted responsibility for the accident or agreed to a settlement of claims arising from the accident or until a court of this state has determined that the driver was negligent or responsible for the accident in whole or in part. If the driver is found negligent or responsible for the accident, in whole or in part, the license or privilege must be suspended and will not be returned until the driver complies with this chapter.

Id.

25. *Id.*

26. *Id.* Sections 39-16-09 and 39-16-10 of the North Dakota Century Code govern the amount and procedure for the deposit of a security that must be posted to satisfy proof of financial responsibility. *Id.* §§ 39-16-09, -10 (1980). Sections 39-16.1-09 and 39-16.1-10 set forth the procedure for certification of an insurance policy to prove financial responsibility. *Id.* §§ 39-16.1-09, -10; *see also id.* § 39-16.1-11 (Supp. 1985) (describing the provisions that a certified policy must contain).

27. *Id.* § 39-16-05(2) (Supp. 1985). Subsection 2 of § 39-16-05 exempts various people from the financial responsibility requirements. *Id.* The subsection provides as follows:

> 2. This section does not apply . . .
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> a. To a driver, if the driver is the owner of the motor vehicle involved in the accident and had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in the accident, affording substantially the same coverage as is required for proof of financial responsibility under chapter 39-16.1.
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> b. To a driver, if not the owner of the motor vehicle, if there was in effect at the time of the accident an automobile liability policy or bond with respect to the

post the required security, to purchase a liability insurance policy that satisfies the financial responsibility requirements, or to qualify under one of the statutory exemptions results in suspension of an individual's license.[28]

Although an automobile liability insurance policy is normally deemed to be for the insured's protection,[29] a policy certified as proof of financial responsibility also protects third parties.[30] Financial responsibility laws require certified policies to contain an omnibus clause that extends coverage under the policy to persons using the insured vehicle with the express or implied consent of the owner.[31] Financial responsibility laws also operate to make the insurer's liability absolute upon the occurrence of injury or damage.[32] Therefore, if an insurance policy has been issued to satisfy a state's financial responsibility laws, an insurer may not

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driver's operation of the motor vehicle, affording substantially the same coverage as required for proof of financial responsibility under chapter 39-16.1.

c. To a driver, if the liability of the driver for damages resulting from the accident is, in the judgment of the commissioner, covered by any other form of liability insurance policy or bond or certificate of self-insurance under section 39-16-32.

Id.; *cf.* Legislation, *supra* note 20, at 1053 (discussing the operation of financial responsibility laws and determining that the majority of motorists satisfy the security requirement by obtaining an automobile liability policy).

28. N.D. CENT. CODE § 39-16-05(1) (Supp. 1985). For the text of section 39-16-05(1), see *supra* note 24.

29. *See* 12 COUCH, *supra* note 13, § 45:7.

30. *See* Utilities Ins. Co. v. Potter, 188 Okla. 145, ____, 105 P.2d 259, 263-64 (1940) (financial responsibility laws are for the protection of the general public and should be construed most strongly against the insurer).

31. *See, e.g.*, N.D. CENT. CODE § 39-16.1-11(2)(b) (Supp. 1985). Subsections 2 and 3 of § 39-16.1-11 of the North Dakota Century Code contain a standard omnibus clause. The subsections provide, in relevant part, as follows:

> 2. Such owner's policy of liability insurance:
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> b. Shall insure the person named therein and any other person, as insured, using such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicles . . . .
>
> 3. Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle, either unlimited, or limited by excluding certain classes or types of motor vehicles . . . .

Id.

32. *See, e.g., id.* § 39-16.1-11(6)(a). Subsection 6 of § 39-16.1-11 of the North Dakota Century Code provides, in relevant part, as follows:

> 6. Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:
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> a. The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

Id.

rely on standard policy defenses to cancel the policy after the occurrence of an accident that causes injury or damage.[33]

Litigation concerning financial responsibility laws has generally involved the issue of whether the coverage requirements of the laws apply only to policies certified as proof of financial responsibility, or whether they also apply to voluntarily purchased liability insurance policies.[34] Authorities conflict on this issue.[35] The majority of states has determined that the financial responsibility laws apply only to policies certified as proof of financial responsibility.[36]

The majority viewpoint is supported by two rationales. The first rationale can be inferred directly from the statutory language of North Dakota's Financial Responsibility Act.[37] Subsection 39-16.1-11(1) of the North Dakota Century Code defines a "motor vehicle liability policy" as a policy certified as proof of financial responsibility.[38] The policy coverage requirements of the financial responsibility laws are applicable only to a "motor vehicle liability policy."[39] Subsection 39-16-05(2) uses a different term — "automobile liability policy" — to refer to policies purchased voluntarily to avoid the sanctions of subsection 39-16-05(1).[40] It has

33. *See id. See generally* 12 COUCH, *supra* note 13, §§ 44A:1-136 (discussion of standard policy defenses). The advent of financial responsibility laws, with their strong policy of protecting innocent traffic accident victims from financial hardship, has caused courts to stress the compensatory feature of liability insurance. Legislation, *supra* note 20, at 1057. The courts have sought to give the injured person rights under the insurance contract. *Id.* These rights are derived from statute and public policy and are independent from the insured's rights. *Id.* As a result, many of the traditional policy defenses, such as fraud or misrepresentation by the insured, breach of warranty, and violation of a policy provision, have been affected. *Id.*

34. See Note, *California Financial Responsibility Laws — A Judicial Interpretation,* 20 HASTINGS L.J. 1273, 1277-89 (1969) (discussing California case law dealing with that state's financial responsibility laws and their applicability to voluntarily purchased liability policies). The specific issue in most cases has been whether the omnibus coverage provision of the financial responsibility laws, which prohibits driver or beneficiary exclusions, applies to voluntarily purchased policies. *See, e.g.,* Wildman v. Government Employees' Ins. Co., 48 Cal. 2d 31, 39, 307 P.2d 359, 364 (1957) (invalidating exclusionary clause because contrary to omnibus provision). For the text of North Dakota's omnibus statute, see *supra* note 31.

35. *Compare* Lewis v. Mid-Century Ins. Co., 449 P.2d 679, 681 (Mont. 1969) (provisions of the state's financial responsibility law are not applicable to voluntarily purchased liability insurance policies) *with* Jenkins v. Mayflower Ins. Exch., 93 Ariz. 287, 291, 380 P.2d 145, 148 (1963) (omnibus clause provided for by state's financial responsibility laws is a part of every motor vehicle liability policy).

36. *See, e.g.,* Novak v. State Farm Mut. Auto. Ins. Co., 293 N.W.2d 452, 454 (S.D. 1980) (household exclusion clause violates financial responsibility statute only if policy had been certifed as proof of financial responsibility).

37. *Compare* N.D. CENT. CODE § 39-16.1-11(1) (Supp. 1985) (defining "motor vehicle liability policy") *with id.* § 39-16- 05(2) (referring to "automobile liability policy"). For the text of § 39-16-05(2), see *supra* note 27.

38. N.D. CENT. CODE § 39-16.1-11(1) (Supp. 1985). Section 39-16.1-11 defines the term "motor vehicle liability policy" as follows: "A 'motor vehicle liability policy' . . . means an owner's or an operator's policy of liability insurance, certified . . . as proof of financial responsibility . . . ." *Id.*

39. *See id.* § 39-16.1-11.

40. *See id.* § 39-16-05 (Supp. 1985). The sanctions of § 39-16-05(1) are inapplicable when the motor vehicle or operator involved in the accident was covered by an "automobile liability policy." *Id.* § 39-16-05(2). For the text of § 39-16-05(1), see *supra* note 24. For the text of § 39-16-05(2), see *supra* note 27.

been argued that the legislature contemplated two different types of liability policies, as evidenced by the two terms used in the statutes.[41] Thus, arguably the coverage requirements of the financial responsibility laws are applicable *only* to policies certified as proof of financial responsibility, and not to voluntarily purchased policies.[42]

A minority of states rejects the above approach and argues that it allows artful distinctions between the statutory terms to defeat the purpose of the financial responsibility laws.[43] These states have determined that certain provisions of the financial responsibility laws are applicable to all liability insurance policies, regardless of certification.[44]

The second, and more prevalent, rationale offered for refusing to apply financial responsibility laws to voluntarily purchased liability insurance policies is the existence of modified conformity clauses[45] in most insurance policies.[46] Originally, the typical conformity clause in a liability insurance policy stated that the policy would conform to any applicable financial responsibility law.[47] In 1955 most insurance companies modified their liability

41. *See* United States Fidelity & Guar. Co. v. Walker, 329 P.2d 852 (Okla. 1958). In determining that the phrase "automobile liability policy" has a different meaning than the phrase "motor vehicle liability policy," the court stated as follows:

> From a careful analysis of the act, it is apparent that the lawmaking body contemplated two types of insurance policy for the two classes of operators. One is an "automobile liability policy" voluntarily carried . . . . The other is a "motor vehicle liability policy" which an operator is compelled to carry in order to terminate the suspension of his license . . . .

Id.

42. *See, e.g.*, Hoosier Casualty Co. v. Fox, 102 F. Supp. 214, 232 (N.D. Iowa 1952) (voluntarily purchased policy is not a "motor vehicle liability policy," and thus is not subject to financial responsibility provisions); United States Fidelity & Guar. Co. v. Walker, 329 P.2d 852, 856 (Okla. 1958) (same).

43. *See, e.g.*, Jenkins v. Mayflower Ins. Exch., 93 Ariz. 287, 290-91, 380 P.2d 145, 147-48 (1963) (refusing to make a distinction between the phrases "automobile liability policy" and "motor vehicle liability policy"); Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870, 881, 882-83 (N.D. 1975) (adopting the minority view of refusing to distinguish between the two phrases); *see also* Western Casualty & Surety Co. v. General Casualty Co., 200 N.W.2d 892, 895 (Iowa 1972) (LeGrand, J., dissenting) (arguing that the majority opinion rested on delicate and tenuous distinctions between the two phrases).

44. *See, e.g.*, Jenkins v. Mayflower Ins. Exch., 93 Ariz. 287, 291, 380 P.2d 145, 148 (1963) (questioning the validity of an exclusion in an insurance policy in light of the omnibus clause contained in the state's financial responsibility laws); Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870, 883 (N.D. 1975) (citing *Jenkins* for the proposition that the legislature intended to make no distinction between "automobile liability policy" and "motor vehicle liability policy").

45. *See* 1 COUCH, *supra* note 13, at § 13:7. A conformity clause operates to amend the policy to conform to any applicable statutes. *Id.*

46. *See* Comment, *The New Kansas Motor Vehicle Safety Responsibility Act*, 6 U. KAN. L. REV. 358, 369-70 (1958) (discussing court interpretation of the conformity clause).

47. *Id.* at 369; *see, e.g.*, Howard v. American Serv. Mut. Ins. Co., 151 So. 2d 682, 683 & n.1 (Fla. App. 1963). The conformity clause at issue in *Howard* stated, in part, as follows:

> Such insurance as is afforded by this policy for bodily injury liability or property damage liability shall comply with the provisions of the motor vehicle financial

policies' conformity clauses.[48] The modified clauses stated that the policy was to conform to applicable financial responsibility laws only when the policy had previously been certified as proof of financial responsibility.[49] The modification was an attempt by insurance companies to have the clause conform only those policies that had actually been certified as proof of financial responsibility.[50]

After the modification, much litigation continued concerning whether the coverage requirements of the financial responsibility laws applied to voluntarily purchased liability policies that contained the modified conformity clause.[51] The majority view is that the financial responsibility laws apply only to policies actually certified as proof of financial responsibility.[52]

The minority view is that a conformity clause operates to conform the policy to the minimum policy coverage requirements

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> responsibility law of any state or province which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law . . . .

Id. at 683 n.1. The court determined that if the clause were to have meaning, it was necessary to construe it as operating to conform the policy to the state's financial responsibility laws. *Id.* at 686. The court relied on the general rule of construction of resolving ambiguities in an insurance policy against the insurer. *See id.*

48. Risjord & Austin, *The Financial Responsibility Condition of the Automobile Liability Policy,* 25 U. KAN. CITY L. REV. 83, 83 (1957).

49. *See id.* The typical clause now states, in part, as follows:

> When this policy is certified as proof of financial responsibility for the future under the provisions of the motor vehicle financial responsibility law of any state or province, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability stated in this policy.

Id. at 83 n.2.

50. *Id.* at 83. Risjord and Austin stated that the revision of the typical conformity clause was an attempt by the drafters to preclude further misinterpretations of the clause by the courts. *Id.* Risjord and Austin note that "[t]he revision is significant, not because it changes the policy coverage, but because it is a definite attempt by the policy drafters to spell out precisely what the underwriters have always intended . . . ." *Id.*

The Florida Supreme Court, in 1963, interpreted the pre-1955 clause as operating to conform the policy to the financial responsibility laws regardless of whether the policy had previously been certified. *See* Howard v. American Serv. Mut. Ins. Co., 151 So. 2d 682, 686 (Fla. App. 1963). For a brief discussion of *Howard,* see *supra* note 47. In 1966, however, the Florida Supreme Court held that a modified conformity clause operated to conform the policy to the state's financial responsibility laws only when the policy had been previously certified as proof of financial responsibility. *See* Lynch-Davidson Motors v. Griffin, 182 So. 2d 7, 9-10 (Fla. 1966).

51. *Compare* Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870, 885 (N.D. 1975) (financial responsibility laws are applicable to voluntarily purchased policy containing modified conformity clause) *with* Novak v. State Farm Mut. Auto. Ins. Co., 293 N.W.2d 452 (S.D. 1980) (financial responsibility statute not applicable to insurance contract with modified conformity clause).

52. *See* Novak v. State Farm Mut. Auto. Ins. Co., 293 N.W.2d 452, 454 (S.D. 1980). In *Novak* the court determined that only those policies that had actually been certified as proof of financial responsibility need satisfy the requirements of the financial responsibility laws. *Id.* Since the policy at issue had not been certified, it was not required to follow the provisions of the state's financial responsibility laws, even though it contained the typical conformity clause. *Id.; see also* Lewis v. Mid-Century Ins. Co., 449 P.2d 679, 681 (Mont. 1968) (provisions of the state's financial responsibility laws applied only to policies actually certified as proof of financial responsibility).

of the financial responsibility laws.[53] The requirements are incorporated into the policy to determine whether coverage will be extended to the insured.[54] Under the minority view, therefore, financial responsibility coverage requirements apply to a voluntarily purchased policy containing the clause although the policy was not certified as proof of financial responsibility.[55] The courts adhering to this view have relied to a large extent on the public policy expressed in the financial responsibility laws; namely, to provide compensation to victims of automobile accidents.[56]

In *Wildman v. Government Employees' Insurance Co.*,[57] the California Supreme Court articulated the minority view.[58] At issue was the validity of an exclusion clause contained in an automobile liability insurance policy.[59] The insured argued that the exclusion clause was invalid because it violated the provisions of California's financial responsibility laws.[60] The insurance policy contained the

53. *See, e.g., Hughes,* 236 N.W.2d 870, 885. In *Hughes* the North Dakota Supreme Court determined that a conformity clause operated to conform the policy to North Dakota's financial responsibility laws regardless of whether the policy was certified. *See id.* The court stated that the "clause warrants to the policyholder that, under certain conditions, the policy is in compliance with and conforms to, the requirements of a state's financial responsibility law." *Id.* at 877.

54. *See id.* at 885. The financial responsibility provisions most commonly incorporated into uncertified policies are the omnibus coverage provision and the absolute liability provision. *See, e.g., id.* at 884 (omnibus provision); Shockley v. Sallows, 615 F.2d 233, 237 (5th Cir.) (absolute liability provision), *cert. denied,* 449 U.S. 838 (1980). For the text of North Dakota's omnibus provision, see *supra* note 31. For the text of North Dakota's absolute liability provision, see

55. *See Hughes,* 236 N.W.2d at 885; *see also* Dairyland Mut. Ins. Co. v. Andersen, 102 Ariz. 515, ____, 433 P.2d 963, 965 (1967) (applying the omnibus clause of the financial responsibility laws to a voluntarily puchased liability policy); Wildman v. Government Employees' Ins. Co., 48 Cal. 2d 31, 39, 307 P.2d 359, 364 (1957) (determining a family exclusion clause contained in a voluntarily purchased policy to be invalid because contrary to the state's public policy as expressed in its financial responsibility laws). For a discussion of the *Wildman* decision, see *infra* notes 57-65 and accompanying text.

56. *See, e.g.,* Wildman v. Government Employees' Ins. Co., 48 Cal. 2d 31, 39, 307 P.2d 359, 364 (1957). The Supreme Court of California, in *Wildman,* determined that the basic purpose behind the legislature's enactment of financial responsibility laws was to protect innocent victims of motor vehicle accidents from financial disaster. *See id.* The North Dakota Supreme Court, in Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870 (N.D. 1975), followed the *Wildman* decision and determined that the public policy of protecting innocent victims of accidents from financial disaster dictates that the policy in question must conform to the omnibus coverage requirement of the financial responsibility laws. *Id.* at 884.

57. 48 Cal. 2d 31, 307 P.2d 359 (1957).

58. Wildman v. Government Employees' Ins. Co., 48 Cal. 2d 31, 307 P.2d 359 (1957). For a discussion of the minority view regarding the effect of a conformity clause, see *supra* notes 53-56 and accompanying text. In *Wildman* the Supreme Court of California also determined that the conformity clause was ambiguous and construed the ambiguity against the insurer. 48 Cal. 2d at 35-37, 307 P.2d at 361-63.

59. 48 Cal. 2d at 34, 307 P.2d at 361. The Bonifacios had voluntarily purchased a liability insurance policy covering their Cadillac. *Id.* The policy contained an exclusion clause that restricted coverage to the insured and members of his immediate family whenever the insured vehicle was driven by a non family member. *Id.* A friend of the Bonifacios was driving the Cadillac when an accident occurred resulting in injuries to Mrs. Wildman and damage to Mr. and Mrs. Wildman's property. *Id.* at 33, 307 P.2d at 360. The insurance company denied coverage on the basis of the exclusion clause. *Id.* at 34, 307 P.2d at 361.

60. *See id.* at 37, 307 P.2d at 363; 1937 Cal. Stat. ch. 840, § 5, at 2356 (stating coverage requirements applicable to all motor vehicle liability policies) (current version at CAL. VEH. CODE §§ 16450, 16451 (West 1971) (restricting requirements to policies certified as proof of financial responsibility).

standard pre-1955 conformity clause.[61] The court, relying on public policy considerations[62] and on the conformity clause,[63] determined that the insurance company's construction of the exclusion clause would violate the omnibus provision of the state's financial responsibility laws.[64] The court determined that the legislature intended the provision to be a part of every liability insurance policy issued in California.[65]

In 1975 the North Dakota Supreme Court was faced with the question of whether the omnibus provisions of the financial responsibility laws [66] applied to voluntarily purchased liability insurance policies. In *Hughes v. State Farm Mutual Automobile Insurance Co.*[67] the issue was whether a family exclusion clause contained in a voluntarily purchased insurance policy was valid.[68] The policy contained the standard post-1955 conformity clause, which stated that the policy would conform to state law only if the policy had been certified as proof of financial responsibility.[69] The insured contended that the exclusion violated the public policy of protecting innocent victims of financially irresponsible drivers as

61. *See* 48 Cal. 2d at 38, 307 P.2d at 363. For a discussion of the form of the standard pre-1955 conformity clause and the reasons for its modification, see *supra* notes 45-50 and accompanying text.

62. *See* 48 Cal. 2d at 39, 307 P.2d at 364. The California Supreme Court determined that the state's financial responsibility laws embody the policy of making owners of motor vehicles financially responsible to people injured by them in the operation of their vehicles. *Id.*

63. *See id.* at 40, 307 P.2d at 365. In reliance upon the conformity clause, the court reasoned that the policy provided "that the insurance afforded by the policy *shall* comply with the provisions of the motor vehicle financial responsibility law . . . ." *Id.* (emphasis in original).

64. *Id.* at 37-40, 307 P.2d at 363-65. For the text of a typical omnibus statute, see *supra* note 31.

65. *See* 48 Cal. 2d at 40, 307 P.2d at 365; *see also* Note, *California Financial Responsibility Laws — A Judicial Interpretation,* 20 HASTINGS L.J. 1273, 1277-80 (1969) (criticizing judicial interpretation of California's financial responsibility laws as being contrary to the apparent intent of the California Legislature). The public policy enunciated in *Wildman* was the basis for later California decisions holding various types of exclusionary clauses invalid because contrary to the public policy of protecting innocent victims of traffic accidents from financial disaster. *See, e.g.,* Pacific Indem. Co. v. Universal Underwriters Ins. Co., 232 Cal. App. 2d 541, 543, 43 Cal. Rptr. 26, 27-28 (1965) (excluding those who were not partners, employees, directors, or stockholders); Exchange Casualty & Surety Co. v. Scott, 56 Cal. 2d 613, 622, 364 P.2d 833, 838-39, 15 Cal. Rptr. 897, 902-03 (1961) (garage exclusion); American Auto Ins. Co. v. Republic Indem. Co., 52 Cal. 2d 507, 510-11, 341 P.2d 675, 676-77 (1959) (customer exclusion).

66. *See* N.D. CENT. CODE § 39-16.1-11(2)(b), (3) (Supp. 1985). For the text of North Dakota's omnibus statute, see *supra* note 31.

67. 236 N.W.2d 870 (N.D. 1975). Mrs. Hughes was injured while riding on a snowmobile with the insured, Mr. Hughes. Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870, 874 (N.D. 1975). The insurance company denied liability on the basis of the family exclusion clause contained in the voluntarily purchased recreational vehicle insurance policy. *Id.* at 875.

68. *Id.* The exclusion clause provided as follows: "This insurance does not apply . . . to bodily injury to any insured or any member of the family of an insured residing in the same household as the insured." *Id.* at 877.

69. *Id.* The conformity clause provided, in relevant part, as follows:

> When certified as proof of future financial responsibility under any motor vehicle financial responsibility law and while such proof is required during the policy period, this policy shall comply with such law if applicable, to the extent of the coverage and limits required thereby; but not in excess of the limits of liability stated in this policy.

Id. For a discussion of the form of the standard conformity clause and the reasons for its modification in 1955, see *supra* notes 45-50 and accompanying text.

expressed in North Dakota's financial responsibility laws.[70] The court recognized the conflict among authorities regarding the applicability of a state's financial responsibility laws to voluntarily purchased liability insurance policies.[71] The court noted that the difference between the minority and the majority viewpoints seemed to be the particular court's public policy ideals.[72]

In deciding to adopt the minority viewpoint, the court noted that section 39-16-05 of the North Dakota Century Code explicitly defined the requirements that a "liability insurance policy" must provide to constitute proof of financial responsibility after an individual's first accident.[73] According to section 39-16-05 the policy must provide "substantially the same coverage" as policies issued pursuant to chapter 39-16.1 of the North Dakota Century Code.[74] Chapter 39-16.1 requires policies issued pursuant to it to contain an omnibus clause that operates to extend coverage to persons using the insured vehicle with the consent of the owner, and further provides coverage to the insured for any liability resulting from the operation of a motor vehicle.[75] The court determined that North Dakota's policy of protecting innocent victims of traffic accidents from financially irresponsible drivers, evidenced by the legislature's enactment of the financial responsibility laws, compelled them to hold that all policies issued pursuant to section 39-16-05 must contain the omnibus coverage of chapter 39-16.1.[76] Otherwise, the court reasoned, the coverage would not be "substantially the same" as coverage provided under chapter 39-16.1.[77]

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70. 236 N.W.2d at 880. The court noted that "[t]he basic purpose for the Legislature's enactment of financial responsibility laws was to protect innocent victims of motor vehicle accidents from financial disaster." *Id.* at 882. North Dakota's financial responsibility laws are contained in chapters 39-16 and 39-16.1 of the North Dakota Century Code. *See* N.D. CENT. CODE chs. 39-16, 39-16.1 (1980 & Supp. 1985). Section 39-16-05 of the North Dakota Century Code requires an individual involved in certain accidents to establish that he or she is capable of responding to any damages for which he or she may be found liable. *Id.* § 39-16-05 (Supp. 1985). The section gives the State Highway Commissioner the power to suspend the individual's driving privileges if the section's requirements are not fulfilled. *See id.* This sanction is inapplicable to an individual having an acceptable liability insurance policy in effect at the time of the accident. *See id.* An acceptable policy is one providing "substantially the same coverage" as policies issued under chapter 39-16.1. *Id.* Section 39-16.1-11 sets forth the requirements that must be contained in policies issued under chapter 39-16.1. *Id.* § 39-16.1-11.

71. 236 N.W.2d at 880. For a discussion of the conflict between authorities, see *supra* notes 34-56 and accompanying text.

72. 236 N.W.2d at 881. For a discussion of the minority and majority views, see *supra* notes 34-56 and accompanying text.

73. 236 N.W.2d at 883; *see* N.D. CENT. CODE § 39-16-05 (Supp. 1985). For the text of subsection 2 of § 39-16-05, see *supra* note 27.

74. N.D. CENT. CODE § 39-16-05 (Supp. 1985). Section 39-16.1-11 defines the coverage that must be provided by policies certified as proof of financial responsibility. *See id.* § 39-16.1-11 (Supp. 1985).

75. *Id.* § 39-16.1-11(2)(b), (3). For the text of these provisions, see *supra* note 31.

76. *Hughes*, 236 N.W.2d at 884-85.

77. *Id.* at 884. In *Hughes* the court cited Jenkins v. Mayflower Ins. Exch., 93 Ariz. 287, 380 P.2d

In *Shockley v. Sallows*[78] the Court of Appeals for the Fifth Circuit considered whether the provision of North Dakota's financial responsibility laws that renders an insurer's liability absolute upon the occurrence of an accident causing injury or damage applied to a voluntarily purchased automobile liability insurance policy.[79] The court, applying North Dakota law, interpreted *Hughes* as holding that all voluntarily purchased automobile liability insurance policies that afford substantially the same coverage as mandated by the state's financial responsibility laws, are subject to the law's requirements.[80] Accordingly, the court held that the insurer's liability became absolute upon the occurrence of the accident, notwithstanding the insured's misrepresentation of a material fact in the insurance application.[81]

In *Richard v. Fliflet* [82] the dispositive issue was the applicability of a provision of North Dakota's financial responsibility laws to an insurance policy that had been purchased voluntarily and was not certified as proof of financial responsibility.[83] If the financial responsibility provision was applicable, State Farm could not rescind the policy on the basis of the material misrepresentation made by the insured in the insurance application.[84] If the provision were not applicable, State Farm would have been justified in rescinding the policy.[85]

145, while summarily dismissing the contention that there was a meaningful difference between the terms "automobile liability policy" and "motor vehicle liability policy." *Id.* at 882-83. *Compare* N.D. CENT. CODE § 39-16-05(2) (Supp. 1985) (sanctions not applicable when driver of an automobile is covered by an "automobile liability policy"); *with id.* § 39-16.1-11 (referring solely to a "motor vehicle liability policy"). For a brief discussion of the relevance of the statutes' different terminology, see *supra* notes 37-44 and accompanying text.

The North Dakota Supreme Court also concluded that the conformity clause contained in the insured's liability policy would have been "a sufficient basis on which to hold that such a clause does indeed warrant that the policy in question, whether 'certified' or not, complies with *any* applicable financial responsibility laws." 236 N.W.2d at 885 (emphasis in original). For a discussion of the significance of a conformity clause, see *supra* notes 45-65 and accompanying text.

78. 615 F.2d 233 (5th Cir.) (per curiam), *cert. denied*, 449 U.S. 838 (1980).

79. Shockley v. Sallows, 615 F.2d 233 (5th Cir.) (per curiam), *cert. denied*, 449 U.S. 838 (1980). Mrs. Shockley was killed in an automobile accident involving Sallows. *Id.* at 235. Mr. Shockely filed a wrongful death action against Sallows and his insurer. *Id.* At trial, the jury found that Mr. Sallows had concealed a material fact from the insurer and that the insurance policy was null and void. *Id.* On appeal, Shockley argued that rescission of the insurance policy, after the occurrence of the accident, was prohibited by § 39-16.1-11(6)(a) of the North Dakota Century Code. *Id.* For the text of the statutory provision, see *supra* note 7.

80. 615 F.2d at 237. In *Hughes* the North Dakota Supreme Court concluded that the "substantially the same coverage" language of § 39-16-05 requires all automobile liability insurance policies to contain minimum limits of liability and to provide omnibus coverage. *Hughes*, 236 N.W.2d at 883.

81. *Shockley*, 615 F.2d at 237.

82. 370 N.W.2d 528 (N.D. 1985).

83. *See id.* at 530-31. At issue in *Fliflet* was whether § 39-16.1-11(6)(a) of the North Dakota Century Code applies to voluntarily purchased, uncertified automobile insurance policies. *See id.* Section 39-16.1-11(6)(a) prohibits an insurer from canceling motor vehicle liability policies after the occurrence of injury or damage. N.D. CENT. CODE § 39-16.1-11(6)(a) (Supp. 1985). For the text of the statutory provision, see *supra* note 7.

84. *See* 370 N.W.2d at 530.

85. *See id.*

Resolution of the issue required an interpretation of North Dakota's financial responsibility laws in light of the judicial constructions given these statutes in *Hughes* and *Shockley*.[86] The court first stated that the financial responsibility laws were enacted to protect innocent victims of traffic accidents from financial disaster.[87] Second, the court noted that section 39-16-05 requires an individual to have a liability insurance policy that affords substantially the same coverage as mandated by chapter 39-16.1.[88] The court in *Hughes* had determined this to mean that all policies must provide the omnibus coverage defined in subsections 2 and 3 of section 39-16.1-11 of the North Dakota Century Code.[89] The court in *Shockley* had concluded that "substantially the same coverage" required an insurer's liability to become absolute upon the occurrence of injury or damage as provided in subsection 6 of section 39-16.1-11.[90]

The court in *Fliflet* agreed with the Fifth Circuit Court of Appeals' interpretation of North Dakota law.[91] The court stated several reasons for its decision. First, the court noted that North Dakota has a compulsory liability insurance statute requiring all drivers to carry insurance in the same amount as is required under chapter 39-16.1 of the North Dakota Century Code.[92] Therefore, all drivers in North Dakota must carry a liability insurance policy that provides the coverage mandated under the financial responsibility laws.[93]

Second, the court placed considerable reliance on *Hughes*.[94] In *Hughes* the court determined that insurance policies purchased to avoid the sanctions of section 39-16-05[95] must contain the minimum limits and omnibus coverage required by chapter 39-

86. *Id.* at 532-34. For a discussion of the *Hughes* and *Shockley* decisions, and their interpretation of North Dakota's financial responsibility laws, see *supra* notes 67-81 and accompanying text.

87. 370 N.W.2d at 532.

88. *Id.* at 532. Section 39-16-05 of the North Dakota Century Code contains the requirement of "substantially the same coverage." *See* N.D. CENT. CODE § 39-16-05(2) (Supp. 1985). For the text of the statutory provision, see *supra* note 27.

89. *Hughes*, 236 N.W.2d at 883.

90. *Shockley*, 615 F.2d at 237. The court in *Shockley* noted that the insurer's defense, misrepresentation by the insured in applying for the policy, was different from the exclusionary clause defense advanced in *Hughes*. 615 F.2d at 237. *Compare Hughes*, 236 N.W.2d 870 *with Shockley*, 615 F.2d 233. The court concluded, however, that North Dakota's public policy and broad interpretation of its financial responsibility laws dictated that the insurer's liability becomes absolute upon the occurrence of the accident resulting in a death. 615 F.2d at 237.

91. *Fliflet*, 370 N.W.2d at 534.

92. *Id.*; *see* N.D. CENT. CODE § 39-08-20 (Supp. 1985) (the operation of a motor vehicle without an insurance policy in effect that provides the same coverage as required by chapter 39-16.1 is a class B misdemeanor).

93. *See* N.D. CENT. CODE § 39-08-20 (Supp. 1985).

94. *See* 370 N.W.2d at 532-33.

95. *See* N.D. Cent. Code § 39-16-05(1) (Supp. 1985). For the text of § 39-16-05(1), describing the sanctions of the statute, see *supra* note 24. For the text of § 39-16-05(2), explaining how a driver may avoid the sanctions, see *supra* note 27.

16.1.[96] The court in *Fliflet* also noted that the policy's conformity clause operated to bring the policy into compliance with the financial responsibility laws.[97] The court determined that if it allowed the insurance company to rescind after the accident, the coverage provided would not be "substantially the same coverage" as provided under chapter 39-16.1.[98] Therefore, the court held that subsection 6(a) of section 39-16.1-11, which prohibits rescission of an insurance policy after the occurrence of injury or damage, applies to all voluntarily purchased automobile liability insurance policies.[99]

In *Fliflet,* the court expanded *Hughes* by making the requirements of subsection 39-16.1-11(6)(a) applicable to all policies of liability insurance issued in North Dakota, regardless of whether the policy had been certified as proof of financial responsibility.[100] The primary basis for both decisions was the public policy of protecting innocent victims of traffic accidents from financial disaster.[101] Although this policy is desirable, the decision arguably penalizes the insurance company and allows the wrongdoer to profit from his deception.[102] Justice VandeWalle, in his dissenting opinion, criticized the court's decision.[103] He noted that the misrepresentation in the insurance application was intentionally made in order to qualify for a lower insurance premium.[104] Justice VandeWalle stated that he doubted that the legislature intended to "encourage the falsification of insurance applications."[105]

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96. *Hughes,* 236 N.W.2d at 884, 886. In order to satisfy chapter 39-16.1, a motor vehicle liability policy must provide minimum coverage of $25,000 for an accident involving one injury or death, $50,000 for two or more injuries or deaths, and $25,000 for property damage. N.D. CENT. CODE § 39-16.1-11(2)(b) (Supp. 1985). In addition to these minimums, omnibus coverage is required. *Id.* § 39-16.1-11(2)(b), (3). For the text of North Dakota's omnibus provision, see *supra* note 31.

97. 370 N.W.2d at 532-33. The conformity clause at issue in *Fliflet* was similar to the standard modern conformity clause. For the text of the standard conformity clause, see *supra* note 47.

98. 370 N.W.2d at 535; *see* N.D. CENT. CODE § 39-16-05(2) (Supp. 1985) (providing that voluntarily purchased liability insurance must provide substantially the same coverage as required under chapter 39-16.1); *id.* § 39-16.1-11 (specifying coverage requirements for a motor vehicle liability policy). For the text of § 39-16-05(2), see *supra* note 27.

99. 370 N.W.2d at 535. For the text of subsection 6(a) of § 39-16.1-11 of the North Dakota Century Code, see *supra* note 7. Fliflet successfully argued that subsection 6(a) of § 39-16.1-11, which makes the insurer's liability absolute after the occurrence of injury or damage, was essential to fulfill the requirement that all persons must have insurance affording substantially the same coverage as required under chapter 39-16.1. 370 N.W.2d at 535; *see* N.D. CENT. CODE § 39-16-05 (Supp. 1985) (providing that voluntarily purchased liability insurance must provide substantially the same coverage as required under chapter 39-16.1).

100. *Fliflet,* 370 N.W.2d at 535.

101. *See id.*

102. *Id.* at 536 (VandeWalle, J., dissenting). The insurance application was falsified by Lende in an attempt to avoid paying the higher insurance premiums that would result if Bye had applied for the insurance in his own name. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

Ultimately, this case was a dispute between insurance companies.[106] Fliflet had an insurance policy in effect covering his own vehicle.[107] Although his vehicle was not involved in the accident, his insurance company provided him with a defense in this case.[108] Since the parties settled the case, with an agreement that whichever insurance company was obligated to provide coverage for the accident would pay Richard, neither Richard nor Fliflet would have suffered any financial hardship as a result of the accident.[109]

The purpose of the financial responsibility laws is to protect innocent traffic accident victims from financial disaster.[110] This decision stretched the provisions of the financial responsibility laws when there was no need to do so because neither party was in any danger of financial loss.[111] As a result of this decision, insurance companies will be exposed to added risk. Justice Pederson, in his concurrence, noted that this added exposure may lead to higher liability insurance premiums.[112]

MELANIE KOPPERUD

106. *Id.*
107. *Id.* at 529-30.
108. *Id.* at 530.
109. *Id.*
110. *Id.* at 534. For a discussion of the purpose of financial responsibility laws, see *supra* notes 20-22 and accompanying text.
111. *See* 370 N.W.2d at 536 (VandeWalle, J., dissenting).
112. *Id.* (Pederson, J., concurring specially). Justice Pederson concurred in the majority opinion while expressing his personal view to the contrary. *Id.* at 535. Justice Pederson concurred becase of his belief that "the law is expounded in majority opinions, not dissents." *Id.* at 536.