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UNDERSTANDING INSURANCE LAW

Fifth Edition

ROBERT H. JERRY, II

*Dean and Levin, Mabie and Levin Professor of Law
University of Florida
Levin College of Law*

DOUGLAS R. RICHMOND

*Managing Director
Aon Risk Services — Professional Services Group*



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121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800
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MATTHEW  BENDER

Dedications

To Lisa, John, Jim & Beth.

— R.H.J.

For my father.

— D.R.R.

Preface to the Fifth Edition

This edition of *Understanding Insurance Law*, like the one before it and the first, is rooted in Kansas, of all places. Bob Jerry wrote the First Edition as a young professor at the University of Kansas School of Law. Doug Richmond, then a third-year law student at KU, read the First Edition in connection with his Insurance Law class taught by Professor Jerry. In 2003, a year after the Third Edition was published, Professor Jerry moved from the University of Missouri-Columbia School of Law to the University of Florida to become the dean of the Levin College of Law. With these new duties, he needed help if another edition were to see the light of day. Thus, in 2007 we joined as co-authors on the Fourth Edition, further cementing a friendship that began two decades earlier.

The Preface to the first edition of this book observed that “[f]ew subjects as important as insurance law are so neglected by American law schools and law students,” but further noted that academic attention to insurance law was showing signs of growth. Few predictions have proven to be so accurate. Insurance law casebooks and treatises are now abundant and scholarly interest in insurance law has expanded in many other ways. Insurance law courses are now popular, as law students recognize the practical importance of the subject. Indeed, educators and students have come to understand what practicing lawyers have long known — that insurance law is a critically important subject; indeed, it is difficult to imagine a piece of litigation or a transaction that does not involve insurance in some way.

Because the subject of insurance law is vast, the aim of this book must be modest. Our purpose is to present in a single volume an analytic and substantive survey of the topics likely to be covered in an insurance law course. Because many of those topics are routinely subjects of litigation, we expect that insurance law practitioners and judges will also find parts of this book to be helpful. To the extent they do so, we are flattered. But our principal objective is to make the substance of insurance law accessible and understandable to law students and to lawyers who are unfamiliar with the subject.

Much of this book is necessarily descriptive. But we further intend that the text provide perspective — sometimes economic, sometimes historical, sometimes political, and always, we hope, practical. After all, students who use this book will soon be practicing lawyers, and will benefit from seeing different approaches. For courts and lawyers who are already in practice, we hope that exposure to different approaches will perhaps shed at least a little light on some murky areas. Also, we are not shy about offering our own critical assessments of insurance law doctrines and their directions or evolution, but we have strived to separate description and opinion.

No book is solely the product of its authors, and this one is no exception. We have built on the work of many fine insurance law scholars and lawyers who devote their practices to insurance law. And there are many people to whom we owe special thanks. Dean Jerry appreciates his friend Peter Maxfield suggesting to him in 1985 that he write a text on the fundamentals of insurance law. Dean Jerry is especially grateful to a number of research assistants he has had through the years who have helped him with the book: on the Fifth Edition, Chris Dietzel, L’12, University of Florida; on the Third Edition, Michele Mekel, Bruce Nguyen, Patrick Morgan, and Jeff Lasswell, all students at the

Preface to the Fifth Edition

University of Missouri-Columbia; on the Second Edition, Michael Elsner, Jason Massie, Bill Bruns, Teresa Newsom, and Bryan Rosenstiel, all students at the University of Memphis; and on the First Edition, Scott Young, Charles Scanlon, Kevin Engels, Susan Hunt, Brian Doerr, and Jerry Capps, all students at the University of Kansas. The absence of students assisting Dean Jerry on the Fourth Edition is a testament to the amount of work Doug Richmond did on that edition. Last but far from least, he is grateful to his wife, Lisa Nowak Jerry, for all of her help and support not only on this text but on just about everything good that has happened in his career.

Doug Richmond is grateful to the many fine lawyers with whom he worked at his law firm in Kansas City, Missouri, where he was fortunate to build a challenging and enjoyable trial and appellate practice fueled by insurance and insurance law. Doug owes whatever professional successes he can claim to the immense support of the outstanding young lawyers who labored with and tolerated him on a daily basis, including Dave Barnard, Darren Black, Carlton Callenbach, Josh Ellwanger, Mike Matula, Orion Riggs, Bob Rooney, and Marty Rosemann. They remain special friends today. He never would have had any sort of meaningful legal career but for his great clients, whose patience and loyalty were invaluable. The clients to whom he is particularly indebted are too numerous to mention. And, of course, he owes thanks to friends at many law firms around the country who, over the years, have generously shared their ideas, opinions, and suggestions on a range of thorny issues. You know who you are.

We sincerely hope that readers find this book helpful to their understanding of insurance law. We welcome all comments, criticisms, and suggestions. Like insurance lawyers everywhere, we are still, and always, learning.

Robert H. Jerry, II
Douglas R. Richmond
October, 2011

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