

West Nutshell Series

美国法精要·中译本

chinese
translation
series

美国保险法

[第4版]

Insurance Law

4th Edition

John F. Dobbyn

【美】约翰·F·道宾 著
梁鹏 译



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West Group

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【美】约翰·F.道宾 (John F. Dobbyn)

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by John F. Dobbyn

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献辞

谨以此书献给我的妻子洛伊丝——我的伴侣、我的爱人、上帝所赐予的挚友，她使我一生快乐圆满。

序言

保险法领域自成一個世界。从理论上讲,保险法仅仅是合同法的一块领地,但如果有人以为合同中的字词适用于它们的常用释意,那么这块领地就会像雷区一样布满陷阱。保险法案之所以读起来常常像《爱丽丝漫游记》一样难懂,是因为合同(保单)只是影响承保人和保险人决定的三种因素之一。第二种因素是大量的“公共政策”。这类政策通常站在被保险人集团这边。长久以来,法院承认保险是大多数个人和公司经济计划中的重要成分。保险业出售和服务的产品,比其他行业涉及的产品,对我们经济稳定的影响更大:如果允许保险业像其他行业一样随心所欲、唯利是图地去生产和服务产品,那么将产生一场范围广泛的大灾难。不像花生酱和电灯泡,保险产品尤其复杂。当普通消费者拿到一张保单的时候,他对买了什么(或者没买什么)知之甚少。因此,法院(和立法机构)倾向于公共利益因素,以确保消费者购买的产品合理地接近于他想买的产品。第三种因素(除了承保人)很少提及,但在预测许多案例结果的时候还得认真考虑,即在个案中,法官和陪审团倾向于支持被保险人对抗强大的保险公司,因为被保险人极容易受到

欺辱,他们给予了被保险人父亲般的关怀。在保单语言存在“歧义”的情况下,第三种因素促使法院朝着对保单起草人(承保人)不利的方向去解释保单语言中的“歧义”,尽管当初被保险人只要稍微想想就能发现这种歧义,法院和陪审团依旧会支持被保险人;有时候,第三种因素干脆对整个书面合同不予理睬,采取能够满足被保险人“期望”的方式进行解释。不管哪种情况,第三种因素能够让保险人意外获胜,事实上也经常如此。

本书的目的在于:通过同时探究这三种因素的此消彼长,来描述保险法这门课程,从而为法律从业人员或法学学生提供整套的法律和原则,指出保险法特别的方向感,使他们知道在这个领域里,如果适用单纯的合同法原则,会导致错误地预测法院将如何处理某个给定的案例。

在这类书里,我们都必须感谢两位当代伟人,他们从混乱中理出秩序,在本领域内作出深远的实质性贡献。如果有人需要超出本书资源的局限,那么我将全力推荐他们的作品。第一位是威廉·R. 万斯(William R. Vance)教授。其代表作《万斯论保险》在1951年经比伊斯特·M. 安德森(Buist M. Anderson)修订以后,目前已经出过三版。第二位是罗伯特·E. 基顿(Robert E. Keeton)教授(现在是法官)。他创作的那篇杰出论文,经过基顿法官和艾伦·I. 威狄斯(Alan I. Widiss)的编辑,成为价值不菲的成功作品。

我还想感谢世界上最好的两位研究助理员勤劳理性的工作。他们是蒂莫西·莱文(Timothy Levin)和希拉·汤普森(Sheila Thompson)。两位都作出了无比宝贵的贡献。

我还要感谢尼尔·莱兹尼克(Neil Reznik)的特别推荐。

最后,面对自己直接负责的已经打出或即将打出的文字,我要从个人角度表达我对母亲和父亲的感谢和爱意。我考虑每个项目时,他们都坚定不移地给予帮助和鼓励。

还有我 34 年来的新娘。没有她的支持和爱情,每个项目都不值得去做。

约翰·F. 道宾

宾夕法尼亚州维拉诺瓦

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TABLE OF CASES

- Aetna Cas. and Sur. Co. v. Dow Chemical Co., 28 F.Supp.2d 421 (E.D.Mich.1998)
- American Economy Ins. Co. v. Liggett, 426 N.E.2d 136 (Ind.App. 3 Dist.1981)
- Aqua Craft I, Inc. v. Boston Old Colony Ins. Co., 136 Misc.2d 455, 518 N.Y.S.2d 863 (N.Y.Sup.1987)
- Argonaut Southwest Ins. Co. v. Maupin, 500 S.W.2d 633 (Tex. 1973)
- Arnold v. Indemnity Fire Ins. Co. of New York, 152 N.C. 232, 67 S.E. 574 (N.C.1910)
- Auerbach v. Maryland Cas. Co., 236 N.Y. 247, 140 N.E. 577 (N.Y.1923)
- Bacon v. Federal Kemper Life Assur. Co., 400 Mass. 850, 512 N.E.2d 941 (Mass.1987)
- Bailey v. Gulf Ins. Co., 406 F.2d 47 (10th Cir.1969)
- Big Town Nursing Homes, Inc. v. Reserve Ins. Co., 492 F.2d 523 (5th Cir.1974)
- Bishop v. Allstate Ins. Co., 623 S.W.2d 865 (Ky.1981)
- BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996)
- Brandt v. Superior Court, 210 Cal.Rptr. 211, 693 P.2d 796 (Cal.1985)
- Broadwell Realty Services, Inc. v. Fidelity & Cas. Co. of New York, 218 N.J.Super. 516, 528 A.2d 76 (N.J.Super.A.D.1987)
- Brown v. Guarantee Ins. Co., 155 Cal.App.2d 679, 319 P.2d 69 (Cal.App. 2 Dist.1957)
- Brownell v. Board of Education of Inside Tax Dist. of City of Saratoga Springs, 239 N.Y. 369, 146 N.E. 630 (N.Y.1925)

TABLE OF CASES

- Burnaby v. Standard Fire Ins. Co., 20 Cal.Rptr.2d 44 (Cal.App. 2 Dist.1993)
- Burne v. Franklin Life Ins. Co., 451 Pa. 218, 301 A.2d 799 (Pa.1973)
- Burr v. Commercial Travelers Mutual Acc. Ass'n of America, 295 N.Y. 294, 67 N.E.2d 248 (N.Y.1946)
- Burstein v. Prudential Property and Cas. Ins. Co., 570 Pa. 177, 809 A.2d 204 (Pa.2002)
- Burstein v. Prudential Property and Cas. Ins. Co., 801 A.2d 516 (Pa.2002)
- Burton v. John Hancock Mut. Life Ins. Co., 164 Ga.App. 592, 298 S.E.2d 575 (Ga.App.1982)
- California Casualty Gen. Ins. Co. v. Superior Court, 173 Cal. App.3d 274, 218 Cal.Rptr. 817 (Cal.App. 4 Dist.1985)
- Chavers v. National Sec. Fire & Cas. Co., 405 So.2d 1 (Ala.1981)
- C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975)
- Clifford F. MacEvoy Co. v. United States for Use and Benefit of Calvin Tomkins Co., 322 U.S. 102, 64 S.Ct. 890, 88 L.Ed. 1163 (1944)
- Cody v. Connecticut General Life Ins. Co., 387 Mass. 142, 439 N.E.2d 234 (Mass.1982)
- Comunale v. Traders & General Ins. Co., 50 Cal.2d 654, 328 P.2d 198 (Cal.1958)
- Coppi v. West American Ins. Co., 247 Neb. 1, 524 N.W.2d 804 (Neb.1994)
- Crisci v. Security Ins. Co. of New Haven, Conn., 66 Cal.2d 425, 58 Cal.Rptr. 13, 426 P.2d 173 (Cal.1967)
- Cronin v. Vermont Life Ins. Co., 20 R.I. 570, 40 A. 497 (R.I. 1898)
- Davenport v. Firemen's Ins. Co. of Newark, N.J., 47 S.D. 426, 199 N.W. 203 (S.D.1924)
- Doelger & Kirsten, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa., 42 Wis.2d 518, 167 N.W.2d 198 (Wis.1969)

TABLE OF CASES

- Egan v. Mutual of Omaha Ins. Co., 169 Cal.Rptr. 691, 620 P.2d 141 (Cal.1979)
- Eichelman v. Nationwide Ins. Co., 551 Pa. 558, 711 A.2d 1006 (Pa.1998)
- Employers Ins. of Wausau v. Albert D. Seeno Const. Co., 692 F.Supp. 1150 (N.D.Cal.1988)
- Employers' Liability Assur. Corp., Ltd. v. Vella, 366 Mass. 651, 321 N.E.2d 910 (Mass.1975)
- Essex Chemical Corp. v. Hartford Acc. and Indem. Co., 261 F.3d 491 (3rd Cir.2001)
- Farmers' Conservative Mut. Ins. Co. v. Neddo, 111 Ind.App. 1, 40 N.E.2d 401 (Ind.App.1942)
- Federal Trade Com'n v. National Casualty Co., 357 U.S. 560, 78 S.Ct. 1260, 2 L.Ed.2d 1540 (1958)
- Fireman's Fund Ins. Co. v. Maryland Casualty Co., 26 Cal. Rptr.2d 762 (Cal.App. 4 Dist.1994)
- First Sav. & Loan Ass'n of Jersey City, N. J. v. American Home Assur. Co., 327 N.Y.S.2d 609, 277 N.E.2d 638 (N.Y.1971)
- Flatow v. Lumbermen's Mut. Cas. Co., 56 Misc.2d 618, 289 N.Y.S.2d 279 (N.Y.City Civ.Ct.1968)
- Fuston v. National Mut. Ins. Co., 440 N.E.2d 751 (Ind.App. 1 Dist.1982)
- Future Realty, Inc. v. Fireman's Fund Ins. Co., 315 F.Supp. 1109 (S.D.Miss.1970)
- Gatzweiler v. Milwaukee Elec. Railway & Light Co., 136 Wis. 34, 116 N.W. 633 (Wis.1908)
- GEICO, In re v. Morris, 1997 WL 527982 (Del.Super.1997)
- Girgis v. State Farm Mut. Auto. Ins. Co., 75 Ohio St.3d 302, 662 N.E.2d 280 (Ohio 1996)
- Globe Mut. Life Ins. Co. of New York v. Wolff, 95 U.S. 326, 24 L.Ed. 387 (1877)
- Golden Eagle Ins. Co. v. Foremost Ins. Co., 25 Cal.Rptr.2d 242 (Cal.App. 2 Dist.1993)
- Grandin v. Rochester German Ins. Co., 107 Pa. 26 (Pa.1884)
- Gruenberg v. Aetna Ins. Co., 108 Cal.Rptr. 480, 510 P.2d 1032 (Cal.1973)

TABLE OF CASES

- Hamilton Fire Ins. Co. v. Greger, 246 N.Y. 162, 158 N.E. 60 (N.Y.1927)
- Hartford Fire Ins. Co. v. Cagle, 249 F.2d 241 (10th Cir.1957)
- Haynes v. Missouri Property Ins. Placement Facility, 641 S.W.2d 497 (Mo.App. E.D.1982)
- Hemenway v. MFA Life Ins. Co., 211 Neb. 193, 318 N.W.2d 70 (Neb.1982)
- Home Ins. Co. of New York v. Gilman, 112 Ind. 7, 13 N.E. 118 (Ind.1887)
- Home State Life Ins. Co. v. Russell, 175 Okla. 492, 53 P.2d 562 (Okla.1936)
- Howell v. Ohio Cas. Ins. Co., 130 N.J.Super. 350, 327 A.2d 240 (N.J.Super.A.D.1974)
- In re (see name of party)**
- Insurance Co. v. Stinson, 103 U.S. 25, 26 L.Ed. 473 (1880)
- Kelly v. Layton, 309 F.2d 611 (8th Cir.1962)
- Kentucky Farm Bureau Mut. Ins. Co. v. Thompson, 1 S.W.3d 475 (Ky.1999)
- Kline v. The Ocean Accident & Guarantee Corporation, 1912 WL 1823 (La.App.Orleans 1912)
- Kransco v. American Empire Surplus Lines Ins. Co., 97 Cal. Rptr.2d 151, 2 P.3d 1 (Cal.2000)
- Krupp v. Aetna Life & Cas. Co., 103 A.D.2d 252, 479 N.Y.S.2d 992 (N.Y.A.D. 2 Dept.1984)
- Lacombe v. Zurich Ins. Co., 210 So.2d 338 (La.App. 3 Cir.1968)
- Lamb-Weston, Inc. v. Oregon Auto. Ins. Co., 219 Or. 110, 341 P.2d 110 (Or.1959)
- Le Cras v. Hughes, 3 Doug. 81, 99 Eng.Rep. 549 (K.B.1782)
- Lewis v. Homeowners Ins. Co., 172 Mich.App. 443, 432 N.W.2d 334 (Mich.App.1988)
- Lewis by Lewis v. West American Ins. Co., 927 S.W.2d 829 (Ky.1996)
- Liberty Nat. Life Ins. Co. v. Weldon, 267 Ala. 171, 100 So.2d 696 (Ala.1957)
- Life Ins. Co. of Georgia v. Lopez, 443 So.2d 947 (Fla.1983)

TABLE OF CASES

- Long v. Union Indem. Co., 277 Mass. 428, 178 N.E. 737 (Mass. 1931)
- Lucena v. Craufurd, 2 B. & P.M.R. 269, 127 Eng.Rep. 630 (House of Lords 1806)
- Lukaszewicz v. Concrete Research, Inc., 43 Wis.2d 335, 168 N.W.2d 581 (Wis.1969)
- Lumbermens Mut. Cas. Co. v. Belleville Industries, Inc., 407 Mass. 675, 555 N.E.2d 568 (Mass.1990)
- MacKenzie v. Prudential Ins. Co. of America, 411 F.2d 781 (6th Cir.1969)
- Mamlin v. Genoe, 340 Pa. 320, 17 A.2d 407 (Pa.1941)
- Maravich v. Aetna Life and Cas. Co., 350 Pa.Super. 392, 504 A.2d 896 (Pa.Super.1986)
- Marley v. State Farm Mut. Auto. Ins. Co., 2002 WL 31039462 (Ky.App.2002)
- McAnarney v. Newark Fire Ins. Co., 247 N.Y. 176, 159 N.E. 902 (N.Y.1928)
- Metropolitan Life Ins. Co. v. Conway, 252 N.Y. 449, 169 N.E. 642 (N.Y.1930)
- Michigan Hospital Service v. Sharpe, 339 Mich. 357, 63 N.W.2d 638 (Mich.1954)
- Morton Intern., Inc. v. General Acc. Ins. Co. of America, 134 N.J. 1, 629 A.2d 831 (N.J.1993)
- Mutual Life Ins. Co. v. Terry, 82 U.S. 580, 21 L.Ed. 236 (1872)
- Mutual Life Ins. Co. of New York v. Allen, 138 Mass. 24 (Mass. 1884)
- Mutual of Enumclaw Ins. Co. v. Wiscomb, 97 Wash.2d 203, 643 P.2d 441 (Wash.1982)
- National Filtering Oil Co. v. Citizens' Ins. Co., 106 N.Y. 535, 13 N.E. 337 (N.Y.1887)
- National Sec. Fire & Cas. Co. v. Bowen, 417 So.2d 179 (Ala. 1982)
- Neal v. Farmers Ins. Exchange, 148 Cal.Rptr. 389, 582 P.2d 980 (Cal.1978)
- Nelson v. Home Ins. Co., 353 So.2d 763 (Miss.1977)
- Northwest Airlines, Inc. v. Globe Indem. Co., 303 Minn. 16, 225 N.W.2d 831 (Minn.1975)

TABLE OF CASES

- Pachucki v. Republic Ins. Co., 89 Wis.2d 703, 278 N.W.2d 898 (Wis.1979)
- Paramount Fire Ins. Co. v. Aetna Cas. & Sur. Co., 163 Tex. 250, 353 S.W.2d 841 (Tex.1962)
- Paul v. State of Virginia, 75 U.S. 168, 19 L.Ed. 357 (1868)
- Paylor v. Hartford Ins. Co., 536 Pa. 583, 640 A.2d 1234 (Pa. 1994)
- Perl v. St. Paul Fire and Marine Ins. Co., 345 N.W.2d 209 (Minn.1984)
- Progressive Northern Ins. Co. v. Schneck, 572 Pa. 216, 813 A.2d 828 (Pa.2002)
- Prudential Property and Cas. Ins. Co. v. Colbert, 572 Pa. 82, 813 A.2d 747 (Pa.2002)
- Ramey v. Carolina Life Ins. Co., 244 S.C. 16, 135 S.E.2d 362 (S.C.1964)
- Ritter v. Mutual Life Ins. Co. of New York, 169 U.S. 139, 18 S.Ct. 300, 42 L.Ed. 693 (1898)
- Romstadt v. Allstate Ins. Co., 844 F.Supp. 361 (N.D.Ohio 1994)
- San Diego Federal Credit Union v. Cumis Ins. Society, Inc., 162 Cal.App.3d 358, 208 Cal.Rptr. 494 (Cal.App. 4 Dist.1984)
- Silverstein v. Metropolitan Life Ins. Co., 254 N.Y. 81, 171 N.E. 914 (N.Y.1930)
- Simpson v. Phoenix Mut. Life Ins. Co., 299 N.Y.S.2d 835, 247 N.E.2d 655 (N.Y.1969)
- South Cent. Bell Telephone Co. v. Ka-Jon Food Stores of Louisiana, Inc., 644 So.2d 368 (La.1994)
- South-Eastern Underwriters Ass'n, United States v., 322 U.S. 533, 64 S.Ct. 1162, 88 L.Ed. 1440 (1944)
- Spezialetti v. Pacific Employers Ins. Co., 759 F.2d 1139 (3rd Cir.1985)
- State Farm Fire & Cas. Co. v. Tringali, 686 F.2d 821 (9th Cir.1982)
- Sternaman v. Metropolitan Life Ins. Co., 170 N.Y. 13, 62 N.E. 763 (N.Y.1902)
- Storms v. United States Fidelity & Guaranty Co., 118 N.H. 427, 388 A.2d 578 (N.H.1978)

TABLE OF CASES

St. Paul Fire and Marine Ins. Co. v. Molloy, 291 Md. 139, 433 A.2d 1135 (Md.1981)

Sunbeam Corp. v. Liberty Mut. Ins. Co., 566 Pa. 494, 781 A.2d 1189 (Pa.2001)

Tank v. State Farm Fire & Cas. Co., 105 Wash.2d 381, 715 P.2d 1133 (Wash.1986)

The Exhibitor, Inc. v. Nationwide Mut. Fire Ins. Co., 494 So.2d 288 (Fla.App. 1 Dist.1986)

Todd v. Nationwide Mut. Ins. Co., 17 N.C.App. 274, 193 S.E.2d 748 (N.C.App.1973)

TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993)

Union Camp Corp. v. Continental Cas. Co., 452 F.Supp. 565 (S.D.Ga.1978)

United States v. _____ (see opposing party)

Vance v. Pekin Ins. Co., 457 N.W.2d 589 (Iowa 1990)

Vos v. Albany Mut. Fire Ins. Co., 191 Minn. 197, 253 N.W. 549 (Minn.1934)

Western Employers Ins. Co. v. Arciero & Sons, Inc., 146 Cal. App.3d 1027, 194 Cal.Rptr. 688 (Cal.App. 2 Dist.1983)

Windrim v. Nationwide Ins. Co., 537 Pa. 129, 641 A.2d 1154 (Pa.1994)

Youse v. Employers Fire Ins. Co., Boston, Mass., 172 Kan. 111, 238 P.2d 472 (Kan.1951)

目 录

献辞

序言

TABLE OF CASES

第一章 保险的本质 /1

A. 功能定义 /1

1. 风险分散 /1
2. 众多的成员 /2
3. 主要从事保险业务的保险人 /3
4. 保险人作为承保人 /3
5. 保险人的功能 /3

B. 保险的类型 /4

1. 人寿保险 (Life Insurance) /4
 - a. 终身保险 (Whole-life Insurance) /5
 - i. 普通终身人寿保险 /5
 - ii. 限期内缴费人寿保险 /5

- iii. 趸缴保费人寿保险 /5
- b. 定期人寿保险(Term Life Insurance) /5
- c. 两全人寿保险(Endowment Life Insurance) /6
- d. 简易人寿保险(Industrial Life Insurance) /7
- e. 相互人寿保险(Mutual Life Insurance) /7
- f. 团体保险 /8
 - i. 概述 /8
 - ii. 保险类型 /8
 - iii. 分摊与非分摊 /9
 - iv. 逆选择 /9
 - v. 代表人的代理 /10
 - vi. 成员对修订或终止的同意 /11
 - vii. 对成员的通知 /11
 - viii. 受益人的转让和变更 /11
 - ix. 对保单上请求的支持 /12
 - x. 法律冲突 /12
- g. 万能人寿保险 /12
 - i. 概说 /12
 - ii. 利率 /12
 - iii. 保险费 /13