

美国法精要·影印本

West Nutshell Series

保险法

第3版

Insurance
Law



【美】约翰·F·道宾/著
JOHN F. DOBBYN



法律出版社



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JOHN F. DOBBYN

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总序

许传玺*

在美国法律教育界与律师实务界,这套“美国法精要”是颇具特色的一套小书。这套书最突出的特点当推它们的简捷明快、深入浅出。每种书均由富有教学经验的法学院教授执笔,在三、四百页的篇幅内集中介绍某一法律部门的基本原理、主要法规和重点案例。

由于这些特点,这套丛书受到了无数美国读者的欢迎和喜爱。众多法学院的学生将这套书作为课外的辅助教材,由此掌握美国各主要部门法的精义。执业律师也经常借助这套书,以迅速了解自己尚未熟习的某些部门法,或者温习过去曾经学过的某些课程。

相信这套书也能赢得国内读者的欢迎。无论是法律专业的本科生、研究生,还是执业律师或其他人士,都能从这套丛书中获得有关美国法律的大量知识,对自己的学习和工作有所助益。此外,通过阅读原汁原味的英文来学习美国法律也应能提高读者的法律英语水平,促进与美国同行的对话和交流。

应原出版者的要求,这套丛书的国内版增加了中文前

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言,以介绍美国各部门法的概况、每种书的内容及原书作者。这些前言作者都是在美国受过专业教育或从事专门研究的中国法律学者甚或专家。相信他们的介绍会对读者有所帮助。

Happy reading!

1999年4月
于哈佛法学院

前 言

乔钢良*

保险渗透到美国社会生活的各个领域。比如,在美国租车填写租单时便面临着是否需要购买保险的问题:租单上列满第三者责任险、财产险、意外事故险、人身保险等险别,五花八门。我的一位朋友去租车,期间万无一失,可惜的是一个星期后去租车行还车倒车时与门相撞,造成上千美元的损失。因未上财产险,只好自己全部负担事故造成的损失。

保险的目的就是帮助人们在生活中对付从“茅屋为秋风所破”到“洪水滔天千里汪洋”等种种难以预料的风险,将所面临的风险由群体来分担。作为一种经济制度,保险能够确保社会经济生活的稳定和安宁,运用多数经济单位的集体力量,通过收取一定保险费的方式建立保险基金,来补偿少数经济单位所遭受的自然或人为的损失,将单一的风险分散消化至整个社会。

自《中华人民共和国保险法》于1995年10月1日实施以来,我国的保险业日趋完善。《保险法》对保险公司的组织形式、设立以及变更的条件和程序、机构的扩展与变更做

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了具体的规定。除此以外,中国人民银行先后公布实施的多项规章制度为中国保险业的健康发展提供了必要的监管工具和标准。近年成立的中国保险监督管理委员会也为保险业的有效监管提供了保障。

在中国保险业转轨的这一历史时刻,由法律出版社影印出版美国西方出版公司出版的约翰·F·道宾教授的《保险法精要》一书,对了解美国的保险业是非常有意义的。道宾教授是美国宾夕法尼亚州 Villanova 大学法学院的教授。他撰写的保险法教科书在美国法学院广为选修保险法课程的学生所采用。记得我在美国乔治城大学法学院攻读 J.D. 学位时,就是《美国法精要》系列丛书——包括道宾教授的保险法一书——的忠实读者。

保险合同属于合同的一种,通常是被保险人与保险人之间设立、变更、终止法律关系的协议。因此,为防止投保人盲目地填写投保申请,确立在保险合同法律关系中各方所应承担的义务和享有的权利,读者必须首先了解保险条款和保险合同的法律效力。也正是在以上几个方面,该书作者为读者简明扼要地提供了很重要的信息,并且通俗易懂。

道宾教授所著的这本《保险法》分以下几个章节:第一章:保险法概论,其中包括人寿险、火灾险、海上和湖泊险、医疗和伤残险、产权险、责任险等险别;第二章:保险利益;第三章:风险;第四章:被保险人范围;第五章:保险索赔程序;第六章:保险人拒绝索赔的理由;第七章:权利的放弃和不容反悔;第八章:赔偿的计算方式;第九章:保险人为被保险人辩护的义务;第十章:代位求偿权;第十一章:最大诚信原则。最大诚信原则是规范和协调保险合同关系的基本原则。虽然它在理论上适用于保险合同的各方当事人,在实

践中,美国法院只是在被保险人诉保险人的诉讼案中运用这一原则,确定保险人对被保险人是否尽职,以更有效地保护投保人的利益;第十二章:再保险;第十三章:履约保证保险;第十四章:保险业的监管。有关章节内容虽然在中国还并不适用,比如,中国的保险公司现在还未开始提供履约保证保险,并且所提供的保险产品较美国市场来说也有一定的局限性,但这些章节都在一定程度上为中国保险业今后的发展提供了借鉴。

作者通过上述章节全面地介绍了美国保险。鉴于美国的联邦体制,除在医疗保险和水灾险等方面,美国联邦政府对保险业的监管是非常有限的。美国的保险业主要是通过法院、州政府以及根据州法律设立的监管机构三方面进行监管的。当然,起重要作用的还是法院。虽然美国不存在一个联邦统一保险法供读者研读,各州的保险法律无论是在理论或是实践方面都是很完善,并且和谐性都是很强的。

该书不但对有志于研究保险法的法学院学生、律师有很大的教益,同时也将对那些希望初步了解美国保险法的读者有益。

1999年6月于北京

DEDICATION

This dedication is the smallest but most sincere expression of gratitude, love, and admiration for one of the real gentlemen of this world, who devoted the major part of his life to giving to his son the most important things in life—particularly himself.

This one's for you, Dad.

*

PREFACE

The area of Insurance Law is a world unto itself. While theoretically it is merely an enclave of contract law, it is like a mine field, full of hidden traps for those who expect that words in a contract will be applied according to their usual meanings. The reason that cases in Insurance Law frequently read like a chapter out of *Alice in Wonderland* is that the contract (policy of insurance) is only one of three factors that work to swing a decision either to the insured or to the insurer. The second factor is a heavy dose of "public policy," usually on the side of insureds as a class. Courts have long recognized that insurance is one of the major ingredients in the economic planning of most individuals and businesses. To allow the insurance industry to sell and service its product with the same kind of free-wheeling, profit-motivation that is typical of industries dealing in products less close to the core of our economic stability could wreak widespread havoc. This is particularly true where the product, unlike peanut butter or light bulbs, is so complex that the average consumer has very little idea of what he has actually bought (or what he has *not* bought) when he takes out a policy of insurance. For this reason, the courts (and legislatures) tend to apply the public interest factor with a heavy hand to be sure that the product the consumer winds up with is reasonably close to

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the one he intended to buy. The third factor is one that is little discussed (except by insurers), but that has to be reckoned with in predicting the outcome in many cases. That factor is the fatherly protection of the underdog insured against the powerful insurance company indulged in by both judges and juries in individual cases. Whether it means interpreting an "ambiguity" in the policy language against the drafter of the policy (insurer), when in fact it took a bit of imagination to find the ambiguity in the first place, or simply disregarding the written contract altogether in order to satisfy the "expectations" of the insured, this third factor can, and frequently does, provide a surprising victory for the insured.

It is the purpose of this book to chart the course of Insurance Law as it follows the pulls and tugs of these three factors simultaneously, in order to give the practitioner or law student, not only a comprehensive set of laws and principles, but also a sense of the peculiar directions of Insurance Law to enable him or her to anticipate the areas in which application of the pure principles of contract law would lead to an erroneous prediction as to how a court will deal with a given case.

In any work of this type, acknowledgment must be given to two of the more modern giants whose substantial contributions in this field have gone far toward bringing order out of chaos. Their texts are highly recommended to those who find themselves in need of resources beyond the confines of this

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book. The first is Professor William R. Vance, whose masterpiece, *Vance on Insurance*, is currently in its third edition, following an able revision by Buist M. Anderson in 1951. The second is the outstanding treatise begun by professor (now Judge) Robert E. Keeton, and brought to a worthy successor edition by Judge Keeton and Alan I. Widiss.

I also want to acknowledge the yeoman services and intellectual contribution of two of the world's finest research assistants—Timothy Levin and Sheila Thompson. They were beyond invaluable.

I appreciate the special recommendations of Neil Reznik.

Finally, by way of a personal note, I must express the gratitude and love that I feel for those most directly responsible for anything that ever has or will come out of my typewriter—my Mother and Father, who have helped and encouraged me in every conceivable way in every project that I have ever considered; and my Bride of twenty-six years, without whose support and love no project would ever be worth undertaking.

JOHN F. DOBBYN

Villanova, Pennsylvania
June, 1995

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