

# WASHINGTON INSURANCE LAW

SECOND EDITION

THOMAS V. HARRIS

# WASHINGTON INSURANCE LAW

*Second Edition*

by

THOMAS V. HARRIS

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# *Dedication*

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**FOR**

**My mother and father**

**AND FOR**

**Marcia, Steve and Laura**

# Preface

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*Washington Insurance Law* organizes and analyzes the various statutes, regulations, and judicial precedents that govern Washington insurance practice. While only a small number of Washington attorneys and insurance professionals specialize in insurance matters, many other lawyers and businesses find it necessary to resolve insurance problems. For that reason, I have designed *Washington Insurance Law* as a reference book for both insurance professionals and for non-specialists.

Throughout my career, I have always felt equally comfortable defending insureds in accident cases, in litigating coverage cases on behalf of insurers, representing insureds against insurers, and in prosecuting personal-injury cases on behalf of plaintiffs. However, during the last 10-15 years, other lawyers' practice patterns have changed significantly. Many attorneys now specialize in one of those substantive areas. There are sound reasons for specialization. In fact, many of Washington's best lawyers are subspecialists. Tort lawyers may choose to limit their practice to products liability, medical malpractice, or any number of other substantive tort areas. Coverage lawyers may decide to focus on environmental coverage disputes, homeowners' litigation, or UIM claims. Unfortunately, specialization creates a concomitant set of risks.

Tort lawyers must also be conversant with the nature of the duty to defend, the responsibilities of counsel when managing a defense that is being provided subject to a reservation of rights, the layering of insurance, the scope of the duty to settle, the impact of UIM coverage, and the parameters of an insurer's right to subrogation. Although certain insurance contracts do not involve the tort process, the primary purpose of many insurance policies is to provide coverage for an insured's potential tort liability. Coverage lawyers cannot competently discharge their duties without a thorough understanding of the tort system. My goal in writing *Washington Insurance Law* is to offer Washington lawyers an integrated framework within which they can analyze all tort and insurance disputes.

*Washington Insurance Law* is structured in a conceptually sequential fashion. The introductory chapters address threshold issues involving the intrinsic nature of an insurance contract, the relationship between an insurer and its insured, the responsibilities of insurers to third-party claimants, the state regulation of insurance, and an overview of the judicial process. After establishing that foundation, I have devoted the next sections of *Washington Insurance Law* to a discussion of other broad topics of general interest. For instance, Chapter 6 analyzes the principles guiding the interpretation and construction of insurance contracts. Subsequent sections discuss high-profile issues such as bad faith and negligence (Chapter 7) the duties to defend and settle (Parts 4 and 5), CGL and UIM policies (Parts 6 and 10), and "other insurance" clauses (Chapter 51). Although claims professionals encounter such topics less frequently, I have also addressed more specific issues such as garnishment and the assignment of bad-faith claims (Chapter 10), claims-made liability policies (Chapter 32), title insurance (Chapter 49), and the Washington Insurance Guaranty Association (Chapter 60). With respect to all topics I have attempted to provide a critical analysis rather than a simple recitation of the controlling legal principles.

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## Preface

A legal textbook without at least one disclaimer would be incomplete. My disclaimer is quite simple. I wrote *Washington Insurance Law* because of my academic interest in the subject matter. The views that I have expressed are mine and not those of my clients. As a practicing attorney, I hope that judges and my legal colleagues will respect that distinction.

Thomas V. Harris

December 2005

# *Acknowledgment*

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I extend my deepest thanks to Jean Ballard for her superb and tireless work in preparing both editions of *Washington Insurance Law* for publication.



# About the Author

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Mr. Harris was born in New York, New York on April 6, 1948. He received his B.A. degree *cum laude* from Harvard College in 1970 and his Juris Doctor degree from Cornell Law School in 1973. He was admitted to the Washington bar in 1973. Mr. Harris worked at the Seattle law firm Merrick, Hofstedt & Lindsey, P.S. from 1973-2004, where he was a shareholder and director. He has been working at Perey-Harris since March 2004.

Mr. Harris is a trial attorney whose primary area of practice is tort and insurance law. He also has extensive experience as a mediator and arbitrator. Mr. Harris is a member of the Washington State Bar Association and Federal Bar Association. He is also a member of the Washington State Trial Lawyers Association. Mr. Harris is a Fellow in the following societies:

- American College of Trial Lawyers
- International Academy of Trial Lawyers
- International Society of Barristers
- American Board of Trial Advocates

In 1998, Mr. Harris served as the Washington Chapter President for the American Board of Trial Advocates. He was voted Trial Lawyer of the Year by the Washington Chapter of the American Board of Trial Advocates in 2002. Mr. Harris' published articles are as follows:

1. "A Practitioner's Guide to the Management and Use of Expert Witnesses in Washington Civil Litigation," 3 University of Puget Sound Law Review 159 (1979);
2. "Washington's Doctrine of Corporate Disregard," 56 Washington Law Review 253 (1981);
3. "Enhanced Injury Theory: An Analytic Framework," 62 North Carolina Law Review 643 (1984) (reprinted in 8 Journal of Products Liability 229 (1985));
4. "Washington's Unique Approach to Partial Tort Settlements: The Modified *Pro Tanto* Credit and the Reasonableness Hearing Requirement," 20 Gonzaga Law Review 69 (1985);
5. "Washington's 1986 Tort Reform Act: Partial Tort Settlements After the Demise of Joint and Several Liability," 22 Gonzaga Law Review 67 (1987).

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