

FUNDAMENTALS OF INSURANCE COVERAGE

In All 50 States

Fifth Edition

The Perfect Insurance Coverage Resource For Claims Handlers, Liability Adjusters, and Insurance Defense Counsel.



"When I have coverage issues in my practice, this is the first resource I look to. It is complete, concise, and easy to understand."

- Donald G. Moore, Esq., Deisch, Marion & Klaus, P.C.

"Matthiesen, Wickert & Lehrer has done it again! This book is a must-have for all claims professionals who deal with insurance coverage issues, especially those with multi-state responsibilities. It's definitely a one-of-a-kind and no one in this line of business should be without it."

- John Macomber, Zurich North America

BY

GARY L. WICKERT

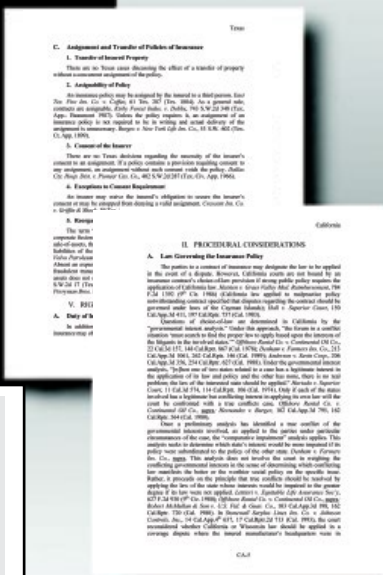
LEE R. WICKERT

"Subrogation professionals necessarily become involved in coverage issues, and this book is the quickest and most complete reference on the subject to be found anywhere."

- Jon Coscia, CEO, Latitude Subrogation Services

"From bad faith to the extent of risks and coverages to policy defenses and environmental issues; this book has it all, and amazingly, covers the law in every state!"

- Kathy Stanke, Sentry Claims Services



Fundamentals of Insurance Coverage – In All 50 States-5th Edition

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About the Authors:

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lawyers around the country. For nearly 30 years, Mr. Wickert has served as an expert witness and insurance consultant on subrogation and insurance-related issues and has been consulted by insurance carriers, lawyers, and legislative bodies from several states. He is a licensed arbitrator and has attended more than 750 mediations in more than 30 different states.

Lee R. Wickert is a third-year law student at Marquette University. He is expected to receive his J.D. and his M.B.A. in 2017. Lee is a research clerk at the insurance litigation firm of Matthiesen, Wickert & Lehrer, S.C. He is a former credit specialist with Johnson Bank in Racine, Wisconsin and former member of the legal team for Wisconsin Governor Scott Walker in Madison, Wisconsin.

praise continued from pg 1

PRaise FOR

“Fundamentals of Insurance Coverage”

“From breaking down an insurance contract to policy defenses to environmental coverage issues, this book covers the law in all 50 states in a clear and understandable way.”

- William J. Evans, Esq., West Bend Mutual Insurance Company

“This book is a necessity whenever coverage issues surface in your files. It covers this complex area of law in a comprehensible manner and is worthy of a novice or experienced professional.”

- Timothy J. Irish, State Auto Insurance Companies

“Badger Mutual Insurance Company has used the services of the attorneys of Matthiesen, Wickert & Lehrer for years and their advice has been invaluable. The information contained in this book will be very helpful as our company expands into different areas of the country.”

- Kathryn P. Heyer, Esq., Badger Mutual Insurance Company

“From breaking down the insurance contract into small understandable bites to setting out the rights and obligations of the carrier and the insured, this book is the bible on insurance coverage regardless of the state you are in.”

- Bill Gray, SIU Manager, GUARD Insurance Group

About the Book:

Fundamentals Of Insurance Coverage – In All 50 States -5th Edition is a unique compendium and overview of all aspects of insurance coverage law, in every state, with a special emphasis on some of the unique aspects of insurance coverage involving environmental claims. The treatise utilizes and cites state and federal statutes, insurance regulations, and case law from every state, as a framework for a unique and unprecedented treatment of this confusing and varied body of law. The book is designed specifically for insurance claims handlers and supervisors who have responsibility for or occasion to deal with coverage issues relating to third-party defense litigation, first-party claims litigation, and/or reservation of rights scenarios. In the past decade, the number of disputes between insurers and insureds over policy coverage, especially involving environmental pollution and exclusions, has increased exponentially. More and more insurance companies, faced with astronomical claims in these areas, have had to resort to meticulously enforcing coverage exceptions and exclusions to maintain profitability. The result has been a dramatic rise in coverage litigation. Millions of dollars have been spent by corporate America and the insurance industry to contest and litigate the obligation of insurers to defend or indemnify insureds held liable to other parties, the state or the federal government for environmental impairment or other insurance obligations.

The purpose of this book is to compile all the relevant law, regulations, and case decisions in these areas from all 50 states into one easy to understand and easy to use reference book – which should be the first place a company should turn when coverage matters rear their ugly heads. While the book intentionally omits references to federal statutes, regulations, or holdings based purely upon federal law, except insofar as they may be necessary to clarify issues of state law, it is a comprehensive treatment of all other aspects of coverage issues which the average claims handler or supervisor might be expected to run across in any given situation.

The integrity of the insurance industry and its commitment to honoring legitimate claims for which it is contractually or legally responsible is offset by the industry's concomitant desire to avoid payment for claims and damages for which it is not contractually obligated and for which there is no insurance coverage. This primer on coverage law is perfect for the insurance professional whose responsibilities are not only spread across various lines of insurance, but across the whole of our continent as well. From the introduction of common issues and common rules to a discussion of coverage triggers, equitable relief, economic loss, property damage, and a variety of policy exclusions, the book is intended to be the legal companion of anybody whose responsibilities take them, however frequently or infrequently, down the uncertain path of coverage denial and coverage litigation.

This one-of-a-kind treatise covers the following issues in all 50 jurisdictions:

- Understanding the Contract of Insurance
- Law Governing the Insurance Policies
- Tackling Ambiguity and Interpretation of Policies
- General Contract Rules for Interpretation
- Rights and Obligations of Contracting Parties
- Limitations of the “Construed Against the Drafter” Rule
- The Extent of Risks and Coverages
- Good Faith and Fair Dealing; Bad Faith
- Basic Policy Defenses
- Cooperation of the Insured
- Failure to Pay Premiums
- Environmental Issues and Related Insurance Law

In addition to being an excellent and easy to understand primer on coverage issues and the basic insurance contract, the book is suitable for both the inexperienced claims professional and the seasoned veteran. It is also the perfect “starting point” for any research or litigation briefing by trial lawyers, defense counsel, or in-house insurance counsel. It is a must for anyone with multi-state responsibilities.

The following issues and topics are covered in detail for each of the 50 states:

I. The Contract of Insurance

- A. Proving the Existence and Terms of Insurance Policies
- B. Missing Insurance Policies
 - 1. Extent of the Burden of Proof
 - 2. Proof of Contents of Missing Policies

II. Procedural Considerations

- A. Law Governing the Insurance Policy
- B. Direct Action Statutes
- C. Statutes of Limitations
 - 1. Breach of Contract
 - 2. Tort—Bad Faith

III. Construction and Interpretation

- A. What Is an Ambiguity?
- B. General Contract Rules for Resolving Ambiguities
- C. Rule that Ambiguities Are Resolved Against Insurer
- D. Limits of “Constructions Against Insurer” Rule

IV. Extent of Risks and Coverage

- A. Insurable Risks

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- 1. Expectations of the Parties
- 2. Liability Created by Statute
- B. Insurability of Punitive Damages
- C. Assignment and Transfer of Policies of Insurance
 - 1. Transfer of Insured Property
 - 2. Assignability of Policy
 - 3. Consent of the Insurer
 - 4. Exceptions to Consent Requirement
 - 5. Reorganizations and Acquisitions

V. Rights and Obligations of the Parties

- A. Duty of Insurer to Defend
 - 1. Trigger of the Duty
 - 2. Consequences of Failure to Defend

VI. Insurer's Duty of Good Faith and Fair Dealing


- A. Insurer's Duty to the Insured
 - 1. Statutory Source/Unfair Claims Settlement Practices Act
 - 2. Implied Covenant of Good Faith and Fair Dealing
 - 3. Conflict of Interest
- B. Insurer's Duty to Third-Party Claimants
 - 1. Implied Covenant of Good Faith and Fair Dealing
- C. Insurer's Duty to its Excess Insurer

VII. Policy Defenses

- A. Cooperation
 - 1. Failure to Cooperate May Bar Coverage
- B. Notice
- C. Misrepresentation
 - 1. False Statements
 - 2. Materiality
 - 3. Intent
- D. Breach of Warranty
- E. Failure to Pay Premiums

VIII. Environmental Issues and Insurance Law

- A. Occurrence/Accidental Event
 - 1. Trigger of Coverage for Tort Claims
 - 2. Expected/Intended
- B. Damages Because of Bodily Injury
- C. Damages Because of Property Damage
- D. Property Damage and Economic Loss
- E. Policy Exclusions
 - 1. Insured's Owned Property Exclusion Clause
 - 2. Pollution Exclusion Clause

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