

Insurance Law Workshop: Fall 2024

Virtual Seminar

Alternate Thursdays 4–5 p.m. ET

The Insurance Law Center at the University of Connecticut School of Law continues its series of online presentations about cutting-edge topics in insurance law. These interactive sessions explore current developments, recent scholarship, and possible futures of insurance and risk-management. Sessions are held on alternate Thursdays at 4:00 p.m. ET. Register at: ilc.law.uconn.edu/insurance-law-workshop.

12 Sep



Marcella Alsan

Yusra Neberai

Xingyou Ye

Interest Groups, Ideology, and Indirect Lobbying: The Rise of Private Health Insurance in the United States

Marcella Alsan, Harvard University; Yusra Neberai, Harvard University; Xingyou Ye, Princeton University

This study examines the rise of private health insurance in the United States post-World War II era. We investigate the role of the American Medical Association (AMA), which financed a campaign against National Health Insurance directed by the country's first political public relations firm, Whitaker & Baxter's (WB) Campaigns, Inc. The AMA-WB Campaign had two key components: (1) physician outreach to patients and civic organizations; and (2) mass advertising that tied private insurance to "freedom" and "the American way." Our findings suggest the rise of private health insurance in the U.S. was not solely due to wartime wage freezes, collective bargaining, or favorable tax treatment. Rather, it was also enabled by an interest group-financed campaign that used ideology to influence the behavior and views of ordinary citizens.

Recommended Reading: Marcella Alsan, Yusra Neberai & Xingyou Ye, *Interest Groups, Ideology, and Indirect Lobbying: The Risk of Private Health Insurance in the United States* (2024).

26 Sep



Rachel Z. Friedman

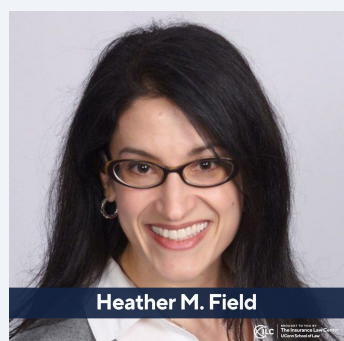
Risk, Insurance and the Welfare State

Rachel Z. Friedman, Tel Aviv University

At the core of the modern welfare state is the institution of social insurance, which provides event-conditioned benefits through a publicly orchestrated system of contributions and distribution. At the core of the modern welfare state is the institution of social insurance, which provides event-conditioned benefits through a publicly orchestrated system of contributions and distribution. Tracing an intellectual history of the practice from the time of the French Revolution through the present, this talk offers an account of how and why social insurance became one of the central policy tools of wealthy democracies. This history reveals that the way in which risk is conceived and calculated has important consequences for the design of social policy. It also shows that the capacity of social insurance to accommodate a plurality of normative principles and aims helps to account for its prominence and political resilience as an institution.

Professor Friedman's book, *Probable Justice: Risk, Insurance, and the Welfare State* (Chicago: 2020) is available for those interested in reading further.

10 Oct



Heather M. Field

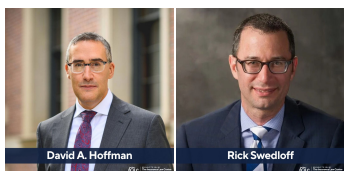
Tax Enforcement by the Private Sector: Deputizing Tax Insurers

Heather M. Field, UC Law, San Francisco

The IRS is outgunned when trying to ensure compliance by large corporations and other sophisticated taxpayers, but the private sector might be able to help. This talk argues for using a private sector party—tax insurers—to expand the IRS's enforcement abilities. If an insured tax position is successfully challenged by a tax authority, the insurer commits to paying the additional taxes owed (plus interest and penalties), up to the policy limit. I propose that the IRS take advantage of insurers' informational and capacity advantages by effectively deputizing insurers as private sector tax enforcers, treating the positions they insure as having been "sustained" in a private "audit." With the right combination of sticks and carrots, private sector tax enforcers could be incentivized to live up to their commitment to "sustain" only strong positions, and taxpayers could be incentivized to pursue "audits" by private sector tax enforcers that live up to those commitments. The talk also identifies the potential concerns this proposal would need to overcome to harness a growing private sector industry for the public good.

Recommended Reading: Heather M. Field, *Tax Enforcement by the Private Sector: Deputizing Tax Insurers*, 99 Ind. L.J. 1179 (2024).

24 Oct



David A. Hoffman

Rick Swedloff

Insurers as Contract Influencers

David A. Hoffman, Penn Carey Law School; Rick Swedloff, Rutgers Law School

Contract boilerplate degrading consumers' litigation options—terms mandating arbitration, exculpating liability, requiring individualized litigation and shifting risk—has proliferated in the last generation. We investigate how insurers influence boilerplate's adoption and content. Interviewing participants in the liability insurance industry, we show that insurers refine boilerplate language, teach policyholders about its efficacy, and decline coverage when it is absent. At the same time, they rarely offer price breaks for adopting boilerplate, suggesting that at least some of the cost savings from consumer boilerplate may end up in the coffers of insurance firms rather than their clients. Insurers are surprisingly skeptical about the value of terms that have particularly excited proceduralists and consumer contract scholars—arbitration and liability waiver clauses—and believe their spread does not materially affect the risks that they insure.

Recommended Reading: David A. Hoffman & Rick Swedloff, *Insurers as Contract Influencers* (2024).

07 Nov



Roy Baharad

Reliability Insurance

Roy Baharad, University of Chicago

Liability for harm not only incentivizes individuals to exercise optimal care and guarantees compensation to victims; it also serves the interest of potential injurers. The prospect of liability equips subjects with a "right to be sued," which enables them to credibly signal their prudence in potentially harmful interactions, thus substantiating trust among counterparties. Liability for medical malpractice, for instance, bolsters the reliability of physicians exactly because they would be the ones suffering the cost of inadequate treatment. Oddly, however, individuals and businesses regularly waive their "right to be sued" by purchasing liability insurance. At its core, insurance is thus in tension with the informational power of liability. This talk examines when and how insurance might undermine credibility and attenuate policyholders' reliability in the eyes of actors with whom they interact—business counterparties, employees, investors, audiences, regulators or patients.

21 Nov



Franziska Arnold-Dwyer

Leveraging Insurance Contracts for Climate Action

Franziska Arnold-Dwyer, University College London

The contractual relationships between an insurer and its policyholders contains enormous potential for insurers to support their policyholders to reduce environmentally harmful activities and take adaptation measures that make their property more resilient to climate risks. But there are important legal pitfalls here as well. This talk examines enabling approaches throughout the policy life cycle, including raising policyholder awareness of climate risk and climate change mitigation/adaptation measures, assessing policyholders' climate-related risk profiles at the pre-contractual stage, price signalling, exercising influence through terms and conditions, and green claims and reinstatement.

Recommended Reading: *A Legal Framework for Net Zero Aligned Insurance Products*, 29 Conn. Ins. L.J. 1 (2022-3).

05 Dec



Chaim Saiman

Is Insurance "Just a Contract" or a "Just Contract"?

Chaim Saiman, Villanova Law School

Courts never tire of saying an insurance policy is "just a contract" and subject to ordinary rules of contract law, especially the plain language approach that strives for formal neutrality between the parties. Yet courts also frequently rely on a narrative that an insurance policy strives to be a "just contract" with special pro-policyholder rules that reach beyond the plain language. How is insurance simultaneously "just a contract" and a "just contract?" When the issue relates to scope or breadth of coverage—whether a loss is included within the bounds of the policy—strict construction gains the upper hand. But when the focus is on the suite of rights that flow from coverage—such as expanded remedies available upon an insurer breach—courts craft coverage rights which are deeper than what can be derived from the plain meaning of the policy. This talk demonstrates the importance of this distinction and demonstrates its implications.

Recommended Reading: *Is Insurance "Just a Contract" or a "Just Contract"?*, 83 Md. L. Rev. 819 (2024).

