

## CURRICULUM VITAE

### **KENNETH S. ABRAHAM**

University of Virginia School of Law  
580 Massie Road  
Charlottesville, VA 22903-1789  
Phone: (434) 924-3616  
Email: ksa@law.virginia.edu

## EDUCATION

Yale Law School, J.D., 1971

Indiana University, A.B. (*Magna Cum Laude*), 1967

## EMPLOYMENT

2006 – Present	<u>David and Mary Harrison Distinguished Professor of Law</u> , University of Virginia School of Law
Fall, 2003	<u>Visiting Professor of Law</u> , Harvard Law School.
1988 - 2006	Held two different Endowed Chairs, University of Virginia School of Law.
1984-1988	<u>Professor of Law</u> , University of Virginia School of Law.
1983-1984	<u>Visiting Professor of Law</u> , University of Virginia School of Law.
1974-1983	<u>Assistant, Associate and Professor of Law</u> , University of Maryland School of Law.
Spring, 1974	<u>Visiting Assistant Professor of Law</u> , Case Western Reserve University School of Law.
1971-1973	<u>Associate</u> , Mazer & Lesemann, Hackensack, New Jersey. General civil practice.
<u>Courses Taught:</u>	Business and Governmental Tort Liability, Complex Insurance Litigation, Environmental Law, Environmental Liability, Evidence, Insurance Law, Liability Insurance Law, Mass Torts, Products Liability, Torts, Tort Theory

Honors and  
Awards:

Honorary Fellow, American College of Coverage Counsel (elected 2015).

Awarded 2012 Liberty Mutual Prize by Boston College Law School, recognizing legal scholarship in property and casualty insurance law.

Elected to the Raven Society, University of Virginia, 2010.

Fellow of the American Academy of Arts and Sciences (elected 2009).

The Roger and Madeline Traynor Faculty Award, 2008. The Traynor Award is given biennially to a senior member of the University of Virginia Law School faculty for "excellence in legal scholarship."

Distinguished Faculty Achievement Certificate, State Council of Higher Education for Virginia, for "outstanding achievement in teaching, research, and public service," 2001.

Robert B. McKay Award, American Bar Association Torts and Insurance Practice Section, recognizing "a commitment to the advancement of justice, scholarship, and the legal profession as demonstrated by outstanding contributions to tort and insurance law," 2000.

All-University of Virginia Outstanding Professor Award, 2000.

Delivered The Monsanto Lecture in Tort Law and Jurisprudence, Valparaiso Law School, 1992.

Delivered the Simon E. Sobeloff Lecture, University of Maryland Law School, 1991.

Elected to Phi Beta Kappa, 1967.

Bar Admissions:

Maryland (1977); Virginia (1988)  
(admitted in New Jersey, 1971, resigned without prejudice, 1994).

Specialized Experience

1987 – Present: Consulting Counsel in major insurance coverage matters, including business interruption, directors & officers liability, employment

liability, environmental liability, commercial property, products liability, and toxic tort liability insurance claims.

1982 – Present      Expert Witness, mainly in insurance coverage disputes (see listing on pp. 10-11).

1992- Present:      Arbitrator, in commercial liability insurance, D&O liability insurance, and Dalkon Shield claims, including Bermuda-Form arbitrations.

## PUBLICATIONS

### Books

TORT LAW AND THE CONSTRUCTION OF CHANGE: STUDIES IN THE INEVITABILITY OF HISTORY (University of Virginia Press, 2022) (co-authored with G. Edward White).

THE FORMS AND FUNCTIONS OF TORT LAW (The Foundation Press, 6th ed. 2022) (1st-5th eds. 1997-2017).

INSURANCE LAW AND REGULATION: CASES AND MATERIALS (The Foundation Press, 7th ed. 2020) (co-authored with Daniel Schwarcz; I am the sole author of 1st-5th eds. 1990-2010).

THE LIABILITY CENTURY: INSURANCE AND TORT LAW FROM THE PROGRESSIVE ERA TO 9/11 (Harvard University Press, 2008) (Chinese Translation, China Social Sciences Press, 2019).

ENVIRONMENTAL LIABILITY INSURANCE LAW (Prentice Hall Law & Business, 1991).

DISTRIBUTING RISK: INSURANCE, LEGAL THEORY, AND PUBLIC POLICY (Yale University Press, 1986).

### Articles and Chapters in Books

*Doctrinal Forks in the Road: The Hidden Message of The Nature of the Judicial Process*, 34 YALE J. OF LAW & THE HUMANITIES 73 (2023) (co-authored with G. Edward White).

*The Work of the American Law Institute in Historical Context*, in Gold & Gordon (eds), THE AMERICAN LAW INSTITUTE: A CENTENNIAL HISTORY (2023) (co-authored with G. Edward White).

*The Limits of Regulation by Insurance*, 98 IND. L. J. 215 (2022) (co-authored with Daniel Schwarcz).

*Shadow Tort Law: Lessons from the Reptile*, 122 COLUM. L. REV. FORUM 110 (2022).

*What History Can Tell Us about the Future of Insurance and Litigation after Covid-19*, 71 DEPAUL L. REV. 169 (2022) (co-authored with Tom Baker).

*Courting Disaster: The Underappreciated Risk of a Cyber Insurance Catastrophe*, 27 CONN. INS. L. J. 407 (2021) (co-authored with Daniel Schwarcz).

*The Inward Turn and the Future of Tort Theory* 14 JOURNAL OF TORT LAW 1 (2021) (co-authored with G. Edward White).

*Rethinking the Development of Modern Tort Liability*, 101 B.U. L. REV. 1289 (2021) (co-authored with G. Edward White).

*The Long-Tail Liability Revolution: Creating the New World of Tort and Insurance Law*, 6 U. PA. J. L. & PUB. AFFAIRS 346 (2021).

*Conceptualizing Tort Law: The Continuous (and Continuing) Struggle*, 80 MD. L. REV. 293 (2021) (co-authored with G. Edward White).

*Police Liability After Repeal of Qualified Immunity, and Before*, 56 TORT TRIAL & INS. PRAC. J. 31 (2021).

*First Amendment Imperialism and the Constitutionalization of Tort Liability*, 98 TEX. L. REV. 813 (2020) (co-authored with G. Edward White).

*Insurance*, in Gold et al. (eds.), THE OXFORD HANDBOOK OF THE NEW PRIVATE LAW 445 (2020).

*"Incomplete" Insurance Coverage*, 26 CONN. INS. L. J. 115 (2020).

*There's No Such Thing as Affirmative Duty*, 104 IOWA L. REV. 1649 (2019) (co-authored with Leslie Kendrick).

*The Puzzle of the Dignitary Torts*, 104 CORNELL L. REV. 317 (2019) (co-authored with G. Edward White).

*Plain Meaning, Extrinsic Evidence, and Ambiguity: Myth and Reality in Insurance Policy Interpretation*, 25 CONN. INS. L. J. 329 (2019).

*Torts without Names, New Torts, and the Future of Liability for Intangible Harm*, 68 AM. U. L. REV. 2089 (2019) (co-authored with G. Edward White).

*The Future Is Almost Here: Inaction Is Actually Mistaken Action*, 105 VA. L. REV. ONLINE 91 (2019) (co-authored with Robert L. Rabin).

*Automated Vehicles and Manufacturer Responsibility for Accidents: A New Legal Regime for a New Era*, 105 VA. L. REV. 127 (2019) (co-authored with Robert L. Rabin).

*Recovering Wagner v. International Railway Co.*, 34 TOURO L. REV. 21 (2018) (co-authored with G. Edward White) (Symposium on Justice Benjamin Cardozo).

*Tort Luck and Liability Insurance*, 70 RUTGERS U. L. REV. 1 (2017).

*The Transformation of the Civil Trial and the Emergence of American Tort Law*, 59 ARIZ. L. REV. 431 (2017) (co-authored with G. Edward White).

*Prosser's "The Fall of the Citadel,"* 100 MINN. L. REV. 1823 (2016).

*The Liability Insurer's Duty to Settle Uncertain and Mixed Claims*, 68 RUTGERS U. L. REV. 337 (2015).

*Risk Aversion, Insurance Insurance, and the Limits of Regulation*, 5 U.C. IRVINE L. REV. 513 (2015).

*Classification Risk and Its Regulation*, in P. Siegelman & D. Schwarcz (ed's), in RESEARCH HANDBOOK ON THE ECONOMICS OF INSURANCE LAW 290 (2015) (co-authored with Pierre-Andre Chiappori).

*Jefferson's Fire Insurance Policy and Monticello's Reconstruction of Slavery*, 19 GREEN BAG 2D 11 (2015).

*Tribute to Judge Guido Calabresi*, 70 ANN. SURVEY OF AMER. LAW 19 (2014).

*Prosser and His Influence*, 6 J. OF TORT LAW 27 (2013) (co-authored with G. Edward White).

*Self-Proving Causation*, 99 VA. L. REV. 1811 (2013).

*Four Conceptions of Insurance*, 161 U. PENN. L. REV. 653 (2013).

*Liability for Bad Faith and the Principle without a Name (Yet)*, 19 CONN. INS. L. J. 1 (2013).

*Strict Liability in Negligence*, 61 DE PAUL L. REV. 271 (2012).

*Catastrophic Oil Spills and the Problem of Insurance*, 64 VAND. L. REV. 1769 (2011).

*Lessons Learned from the History of Corporate Liability Insurance in the United States*, 35 GENEVA PAPERS ON RISK AND INSURANCE 364 (2010).

*Custom, Noncustomary Practice, and Negligence*, 109 COLUM. L. REV. 1784 (2009).

*Stable Divisions of Authority*, 44 WAKE FOREST L. REV. 963 (2009).

*The Common Law Prohibition on Party Testimony and the Development of Tort Liability*, 95 VA. L. REV. 489 (2009).

*Insufficient Analysis of Insufficient Activity*, 108 MICH L. REV. FIRST IMPRESSIONS 24 (2009), <http://www.michiganlawreview.org/assets/fi/108/abraham.pdf>

*The Uses of Accident Law's Past*, 1 JOURNAL OF TORT LAW, Issue 2, Article 2 (2007), available at <http://www.bepress.com/jtl/vol1/iss2/art2>.

*The Hurricane Katrina Insurance Claims*, 93 VA. L. REV. IN BRIEF 151 (2007), available at <http://www.virginialawreview.org/inbrief/2007/08/06/abraham.pdf>

*Perspectives on Defamation Litigation in the United States*, in Paul Gewirtz, (ed.) SPECIALIZED RESEARCH IN PERSONALITY RIGHTS LAW AND TORT LAW (China Legal System Press 2006) (in Chinese).

*Twenty-First-Century Insurance and Loss Distribution in Tort Law*, in M. Stuart Madden (ed.), EXPLORING TORT LAW (2005).

*Liability Insurance and Accident Prevention: The Evolution of an Idea*, 64 MD. L. REV. 573 (2005).

*Liability for Acts of Terrorism under U.S. Law*, in Bernhard A. Koch (ed.), TERRORISM, TORT LAW, AND INSURANCE: A COMPARATIVE SURVEY (2004).

*The Genie and the Bottle: Collateral Sources under the 9/11 Victims Compensation Fund*, (with Kyle Logue) 53 DEPAUL L. REV. 591 (2003).

*The Lawlessness of Arbitration* (with J.W. Montgomery III), 9 CONN. INS. L.J. 355 (2003).

*Rylands v. Fletcher: Tort Law's Conscience*, in Robert L. Rabin and Stephen Sugarman (eds.), TORTS STORIES (2003).

*Eventi Catastrofali Prevedibilità E Assicurabilità: Mito E Realtà Negli Stati Uniti Dopo L'11 Settembre* [Catastrophe, Predictability, and Insurability: Post 9/11 Myth and Reality in the United States], ANNO XLIV FASC. 3-4 DIRITTO ED ECONOMIA DELL'ASSICURAZIONE [“INSURANCE LAW & ECONOMICS”] 651 (2003) (in Italian).

*Liability for Medical Monitoring and the Problem of Limits*, 88 VA. L. REV. 1975 (2002).

*Interpretation or Regulation? Gaunt v. John Hancock Mutual Life Insurance Company*, 2 NEV. L. REV. 312 (2002).

*The Insurance Effects of Regulation by Litigation*, in W. Kip Viscusi (ed.), REGULATION THROUGH LITIGATION (2002).

*The Relation Between Civil Liability and Environmental Regulation: An Analytical Overview*, 41 WASHBURN L. REV. 379 (2002) (The 2002 Ahrens Lecture at the Washburn Law School).

*The Trouble with Negligence*, 54 VAND. L. REV. 1187 (2001).

*The Rise and Fall of Commercial Liability Insurance*, 87 VA. L. REV. 85 (2001).

*Peril and Fortuity in Property and Liability Insurance*, 36 TORT & INS. PRACTICE J. 777 (2001).

*Understanding Prohibitions Against Genetic Discrimination in Insurance*, 40 JURIMETRICS 123 (2000).

*The Expectations Principle as a Regulative Ideal*, 5 CONN. INS. L. J. 60 (1999).

*Allocation of Settlements in Multi-Insurer Coverage Disputes*, 48 FED. OF INS. & CORP. COUNSEL J. 427 (1998).

*The Maze of Mega-Coverage Litigation*, 97 COLUM. L. REV. 2102 (1997).

*A Theory of Insurance Policy Interpretation*, 95 MICH. L. REV. 531 (1996).

*Enterprise Medical Liability and the Evolution of the American Health-Care System*, 108 HARV. L. REV. 381 (1994) (with P. Weiler).

*The Natural History of the Insurer's Liability for Bad Faith*, 72 TEXAS L. REV. 1295 (1994).

*Enterprise Medical Liability and the Choice of the Responsible Enterprise*, 20 AMERICAN JOURNAL OF LAW AND MED. 29 (1994) (with P. Weiler).

*Private Insurance, Social Insurance, and Tort Reform: Toward a New Vision of Compensation for Illness and Injury*, 93 COLUM. L. REV. 75 (1993) (with L. Liebman).

*Enterprise Responsibility for Personal Injury: Further Reflections*, 30 SAN DIEGO L. REV. 333 (1993) (with R. Rabin and P. Weiler).

*Cleaning Up the Environmental Liability Insurance Mess*, 27 VALPARAISO L. REV. 601 (1993) (The 1992 Monsanto Lecture at the Valparaiso University Law School).

*Collective Justice in Tort Law*, 78 VA. L. REV. 1481 (1992) (with G. Robinson).

*What Is a Tort Claim: An Interpretation of Contemporary Tort Reform*, 51 MD. L. REV. 172 (1992) (The 1991 Simon E. Sobeloff Lecture at the University of Maryland Law School).

*The Once and Future Crisis*, 4 J. RISK & UNCERTAINTY 353 (1991).

*"Second Generation" Issues in Environmental Liability Insurance Litigation*, 3 ENVTL. CLAIMS J. 309 (1991).

*Aggregative Valuation of Mass Tort Claims*, 53 LAW & CONTEMP. PROBLEMS 137 (1990) (with G. Robinson).

*Products Liability Law and Insurance Profitability*, 19 J. LEGAL STUD. 837 (1990).

*Punitive Damages and the Rule of Law: The Role of the Defendant's Wealth*, 18 J. LEGAL STUD. 415 (1989).

*Environmental Liability and the Limits of Insurance*, 88 COLUM. L. REV. 942 (1988).

*Statutory Interpretation and Literary Theory: Some Common Concerns of an Unlikely Pair*, in S. Levenson and S. Mailloux (eds.) INTERPRETING LAW AND LITERATURE (1988) [reprinted from 32 RUTGERS L. REV. 676 (1979)].

*Medical Liability Reform: A Conceptual Framework*, 260 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 68 (1988).

*The Causes of the Insurance Crisis*, in W. Olson (ed.), NEW DIRECTIONS IN LIABILITY LAW (1988).

*Redistributional Issues in the Privatization of Government Insurance Programs*, 11 GEORGE MASON L. REV. 151 (1988).

*The Insurance Implications of Administrative Compensation Schemes*, 25 HOUSTON L. REV. 817 (1988).

*Individual Action and Collective Responsibility: The Dilemma of Mass Tort Reform*, 73 VA. L. REV. 845 (1987).

*Making Sense of the Liability Insurance Crisis*, 48 OHIO STATE L.J. 399 (1987).

*Scientific Uncertainty in the Courts*, 2 ISSUES IN SCIENCE AND TECHNOLOGY 93 (Winter 1986) [with Richard Merrill].



*Efficiency and Fairness in Insurance Risk Classification*, 71 VA. L. REV. 403 (1985).

*Cost Internalization, Insurance, and Toxic Tort Compensation Funds*, 2 VA. J. NAT. RES. LAW 123 (1982).

*Adopting Comparative Negligence: Some Thoughts for the Late Reformer*, 41 MD. L. REV. 300 (1982).

*Judge-Made Law and Judge-Made Insurance: Honoring the Reasonable Expectations of the Insured*, 67 VA. L. REV. 1151 (1981).

*Three Fallacies of Interpretation: A Comment on Precedent and Judicial Decision*, 23 ARIZ. L. REV. 771 (1981).

*Alternatives to the Tort System for the Non-Medical Professions: Can They Do the Job?*, 1981 B.Y.U. L. REV. 57.

*Observations on Medical Malpractice: A Look At Performance Patterns Among Attorneys and Physicians* [with S. Kirson], Nov. 1980 MARYLAND MEDICAL JOURNAL.

*Statutory Interpretation and Literary Theory: Some Common Concerns of an Unlikely Pair*, 32 RUTGERS L. REV. 676 (1979) [reprinted in S. Levenson and S. Mailloux (eds.), INTERPRETING LAW AND LITERATURE (1988)].

*Medical Malpractice Reform: A Preliminary Analysis*, 36 MD. L. REV. 489 (1977).

*The Public's Emerging Right to Know*, Oct. 1975 MD. B. J. 38.

#### Review Essays and Book Reviews

*Taking A Lesson From Uncertainty*, JOTWELL (June 2, 2020) (reviewing Tom Baker, *Uncertainty > Risk: Lessons for Legal Thought from the Insurance Runoff Market*, 61 B.C. L. REV. (2020) <https://corp.jotwell.com/taking-a-lesson-from-uncertainty/>).

*Review of Merkin & Steele*, INSURANCE AND THE LAW OF OBLIGATIONS, 5 J. EUROPEAN TORT LAW 356 (2014).

*Principle and Pragmatism in the Compensation Debate* [review essay on J. Stapleton, DISEASE AND THE COMPENSATION DEBATE], 7 OXFORD J. LEGAL STUD. 302 (1987).

*The Costs of Attitudes* [review essay on G. Calabresi, IDEALS, BELIEFS, ATTITUDES AND THE LAW], 95 Yale L.J. 1043 (1986).

Review of R. Burt, *Taking Care of Strangers*, 169 J. NERV. AND MENT. DIS. 740 (1981).

Review of Roberto M. Unger, KNOWLEDGE AND POLITICS and LAW IN MODERN SOCIETY 94 MLN 1202 (1979).

#### SELECTIVE COMMISSION AND ADVISORY BOARD MEMBERSHIPS

American Law Institute, Advisor, *Restatement of Torts (Third): Concluding Provisions* (2019-Present).

Member of the Council, American Law Institute, (1996-2018).

American Law Institute, Advisor, *Restatement of the Law of Liability Insurance* (2010-2018).

American Law Institute, Advisor, *Restatement of Torts (Third): Liability for Physical and Emotional Harm* (1998-2012).

American Law Institute, Advisor, *Restatement of Torts (Third): Products Liability* (1992-97).

Associate Reporter, *Enterprise Responsibility for Personal Injury* (Reporters Study, American Law Institute) (1986-91).

#### EXPERT TESTIMONY IN LEGISLATIVE AND JUDICIAL PROCEEDINGS

(does not include confidential proceedings, including arbitrations)

*Experian PLC v. Zurich Insurance Company et al.*, High Court of Justice, Business and Property Courts of England and Wales, Queen's Bench Division Commercial Court (Expert Report Submitted April 22, 2022).

*Petroleum Underground Storage Tank Release Compensation Board v. Standard Oil Co., et al, and BP Products North America, Inc.*, Court of Claims of Ohio (deposed January 11, 2019).

*State of South Carolina, et al. v. BP plc et al*, Court of Common Pleas for the Twelfth Judicial Circuit of South Carolina (deposed March 23, 2018; testified at trial, November 6, 2018).

*Olin Corporation v. Lamorak Insurance Company*, U.S. District Court for the Southern District of New York (deposed January 16, and April 18, 2018).

*State of South Dakota v. BP plc, et al.*, Circuit Court, Sixth Judicial Circuit, South Dakota (deposed February 23, 2018)).

*NCR Corporation, et al., v. George A Whiting Co., et al.*, U.S. District Court for the Eastern District of Wisconsin (Expert Report submitted under seal, September 2, 2016; Rebuttal Report submitted under seal, October 2, 2016; deposed October 25, 2016).

*State of Utah, et al. v. BP plc et al.*, Third Judicial District, Salt Lake County, Utah (deposed June 29, 2016).

*Georgia Pacific Consumer Products et al. v. NCR Corporation et al.*, U.S. District Court for the Western District of Michigan (Expert Report Submitted December 5, 2014; Supplemental Reports subsequently submitted, testified at trial December 4, 2015).

*Mass Mutual Life Insurance Company et al. v. Certain Underwriters at Lloyds of London*, Superior Court of Delaware, New Castle County (Expert Affidavit submitted November 14, 2013; Deposed July 9, 2014).

*The Continental Insurance Company v. United States Fire Insurance Company and Associated Electric & Gas Services, Limited*, U.S. District Court for the Central District of California (Expert Report Submitted December 9, 2013).

*SP Syntax LLC v. National Union Fire Insurance Company et al.*, Superior Court of Arizona, Maricopa County (Expert Report Submitted February 22, 2013).

*Federal-Mogul Corporation v. Insurance Company of the State of Pennsylvania*, U.S. District Court for the Eastern District of Michigan (Expert Report submitted March 20, 2013; Rebuttal Report subsequently submitted; Deposed June 24, 2013).

*Appleton Papers, Inc. and National Cash Register Corporation v. George A. Whiting Paper Co., et al.*, U.S. District Court for the Eastern District of Wisconsin (Expert Report submitted under seal November 25, 2011; Rebuttal Report under seal subsequently submitted; Deposed under seal, January 17, 2012; testified under seal, February 27, 2012).

*Plantation Pipeline Co. v. Associated Electric & Gas Ins. Services, Ltd*, U.S. District Court for the Northern District of Georgia (Expert Report Submitted February 11, 2011).

*General Electric Company v. David E.W. Lines et al. and One Beacon Insurance Company*, Superior Court of Massachusetts, Suffolk County (Expert Affidavit submitted October 2, 2009).

*Compagnie Des Bauxite de Guinee v. Three Rivers Insurance Company*, U.S. District Court for the Western District of Pennsylvania (Deposed May 7, 2006).

*E.I. duPont de Nemours and Company v. National Union Fire Ins. Co.*, U.S. District Court for Delaware (Deposed September 23, 2004).

*SR International Business Insurance Co. Ltd. v. World Trade Center Properties LLC et al.*, U.S. District Court for the Southern District of New York (Deposed September 22, 2002).

*Minnesota v. Allstate Ins. Co., et al.*, U.S. District Court for the District of Minnesota (Deposed January 11, 2001).

*Massachusetts Department of Public Utilities Rate Hearing* (Deposed on March 15-16, 1990).

*Kennedy v. Miller*, United States District Court for the District of Columbia, (Testified November 3, 1989).

*General Assembly of Virginia, Joint Subcommittee on Insurance Reform*, October 27, 1988 (Regulation of reinsurance).

*General Assembly of Virginia, Joint Subcommittee on Insurance Reform*, July 8, 1988 (Antitrust regulation).

*Interstate Fire Insurance Company v. Chubb Insurance Company*, United States District Court for the District of Maryland (Testified March 7, 1986).

*General Assembly of Maryland, Senate Judiciary Committee*, (Testified March 7, 1982).