Preface

Obtaining cover can mean buying a pig in a poke. This applies particularly to the mass risk insurance sector where inexperienced customers conclude contracts on subjects of which they usually have only the vaguest notion. Often enough it later turns out that this nebulous idea was insufficient and led to inappropriate choices and behaviours. For a comparatively long time, the chronic information deficit of the insurer's contracting partner was more or less tacitly accepted. Especially in recent decades, the readiness to accept the 'black box-character' of insurance products for average customers in the mass risk area has, however, decreased considerably. The preferred means to open this black box was the imposition of various pre-contractual information duties on the insurer, which were expected to foster transparency and to enable informed choices. Thus, a catchphrase of general consumer policy, 'know before you owe', has been taken up for the insurance sector too.

The present book pursues three purposes: first, it examines the way in which the general idea of the information model is specifically implemented under English insurance contract law and compares the results of this examination with the solutions found both under German law and under the recently proposed *Principles of European Insurance Contract Law (PEICL)*. Second, instead of merely describing the solutions reached on these three levels, the book consistently looks at the basic economic considerations that can be recognised behind the various legal interventions. Third, it offers numerous policy recommendations by addressing the inherent limits of the information model, the potential for improvement in current laws, and by making specific proposals to realise that improvement.

As the main focus of insurance-related information duties at the European level is currently (still) on those that can be provided on a standardised basis, they also form the primary focus of this work. Nevertheless, individualised information duties, which according to the view taken here will have a significantly more important part to play in the future, are also discussed and compared. Apart from the main question in both cases, namely the one on the appropriate content of these duties, the follow-up question of the appropriate sanction for their

violation is by comparison touched upon only briefly; the reader may be referred to the existing literature on the subject.

The book in your hands emanated from a thesis which I originally wrote in the course of my post-graduate studies at the University of Manchester. Since then, the original manuscript was consistently revised, updated, and considerably expanded. In fact, the topic has not released its hold on me since my time as a Mancunian-by-choice and so the ideas presented here are the result of a reflection over an extended period. Nevertheless, if I had to start again from scratch, I would presumably write the book yet another way – I fear this outlook is an inevitable companion to an in-depth occupation with any topic and I hope it is not necessarily to the detriment of the reader.

Most of those who decide to study abroad consider the experience gained during that time an invaluable enrichment of their education, if not an altogether life-changing experience. I am no exception. That this experience has become possible is first of all owed to two persons: to my father, Dr Walter Loacker, whose longstanding and manifold support had a considerable influence on the fact that I was ever at all (and am still) engaged in academia and that this engagement has resulted in the publication of a monograph like this one; and to Prof Dr Helmut Heiss, who is not only my most important academic mentor but who also gave me the necessary freedom to pursue such a large project in times when even in academia often only a speedy result counts; lucky are those who still have such mentors.

Moreover, during my stay in the United Kingdom, this work has benefited essentially from the input of Prof John Birds, who was the reason why I chose Manchester for my studies and who always had an open ear for someone who struggled to familiarise himself with the peculiarities of the common law. His friendly advice and his serenity meant a lot me.

Aside from that I am very much indebted to Prof Malcolm Clarke for all he has done for me over the several years we have now known each other. This applies in particular to his readiness to write a Foreword which has given this book a lustre which only he could have lent to it.

Furthermore, the research project embodied in this book benefited considerably from two other recognised doyens of insurance law, namely Prof Anton K Schnyder, who always encouraged the people in his area of responsibility to go abroad and conduct comparative research, and Prof Egon Lorenz, who supported my UK adventure in many ways. Moreover, my scientific approach to insurance law was certainly deeply influenced by the years of work in the so-called Restatement Group, the members of

which I owe thanks for numerous unforgettable debates at our workshop sessions and during more informal encounters into the wee hours.

I am also grateful to a number of colleagues and friends from the three universities at which I have worked thus far – Innsbruck, Mannheim, and Zurich. Representing many, I may mention here Dr Tilmann Altwicker, Dr Vincenzo Bavoso, Dr Franca Contratto, Dr Barbara Haidmayer, Dr Emese Kaufmann-Mohi, Dr Caroline Hager-Rosenkranz, Dr Reto Heizmann, Dr Dagmar Hinghofer-Szalkay, Dr Christian Hug, Christoph Lindt, Beatrice Möller, Dr Goran Seferovic, Dr Miguel Sogo, Dr Yael Strub, Dr Goran Studen, Dr Marlene Wachter, Dr Matthias Wöllner and all the colleagues currently associated with the chair in Zurich.

It has been said that writing in a foreign language leads to the writer slowing down, thinking more deliberately, and avoiding important mistakes.² Although I have given it my best, I fear that in my case, mainly the first applied. It was all the more reassuring to know that I could draw on the linguistic know-how provided by Mandeep Lakhan, her help was a tremendous advantage for this book as was the support provided by the production team at Edward Elgar Publishing, who all merit special thanks. As concerns possible material errors, the usual disclaimer applies: the book only reflects what I personally believe the legal orders examined to be at the time of the manuscript's completion (due to this point in time, the results of the ongoing reform on the law of business insurance disclosure could not be waited for). It is certainly neither perfect nor a complete or definitive statement of these laws and that is why I am always pleased to receive any comments and feedback.

I would like to close by thanking those whose support did not relate to the substance of this book but is at least as important to me personally: I am referring to my siblings Verena and Lorin, and to Annemarie, who all believed in me even when there was little reason to do so.

Zurich, May 2014

² Cf CASS R. SUNSTEIN, *Simpler: The Future of Government* (Simon & Schuster, New York 2013) 215.