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**COURSE SYLLABUS**  
**Insurance Law- Spring 2007**

Classroom: F  
Mondays: 1:40-3:00  
Thursdays: 1:40-3:00

**Required Materials:**

L. Martinez & J. Whelan, *Cases and Materials on Insurance Law* (West Publishing, 5th ed. 2006). Any additional reading material will be distributed in class.

**Reading Assignments:**

The reading assignments are assigned according to the subject area outlined below. You are encouraged to complete the reading assigned for a given subject area, even if the class discussion falls slightly behind this schedule.

An assignment labeled “skim” means that only a general awareness of the material is needed. Unless otherwise indicated, you should skim all textual material with the exception of the notes following the cases. Little class time will be spent on skim assignments.

**Examination:**

The material below together with the class lectures and discussions will be the matter tested on the Spring 2007 examination in Insurance.

## Outline and Reading Assignments

### Class 1 – January 11 (Th)

#### **INTRODUCTION**

##### **Introduction, pg. 1**

*Darby & Darby v. VSI International Inc.*, pg. 1

Notes, pg. 4

##### **What is Insurance?, pg. 4**

*Griffin Systems v. Ohio Department of Insurance*, p. 5

Notes, pg. 12-13

### Class 2 - January 18 (Th)

*Truta v. Avis Rent a Car System, Inc.*, pg. 13

Notes 1, 3, 4, 6-7 pgs. 18-21

#### **Chapter 1 - GOVERNMENTAL REGULATION OF INSURANCE**

##### **A. State Regulation, pg. 24**

*The Purpose of Insurance Regulation*, pg. 24

*State Regulation of Insurers*, pg. 24

*Ostrer v. Schenck*, pg. 25

Notes 1 & 2, pg. 30

### Class 3 – January 22 (M)

*Wilson v. All Service Insurance*, pg. 30

Notes 1& 2, pg. 33

*Populism and Insurance Regulation*, p. 34

##### **B. Federal Regulation, pg. 37**

*Federal Involvement in State Insurance Regulation*, pg. 37

*The McCarran Ferguson Act*, pg. 38

Notes, pg. 39

Skim Questions, pg. 39

*Civil Rights Laws*, pg. 40

Class 4 - January 25 (Th)

ERISA, pg. 45  
*Pilot Life Ins. Co. v. Dedeaux*, pg. 46  
Notes, pg. 49-53  
*Financial Services Reform*, pg. 53  
*Terrorism Risk Insurance*, pg. 57

Class 5 – January 29 (M)

**Chapter 2 - FORMING AND NEGOTIATING THE INSURANCE CONTRACT**

**A. Formalities of Contract Making**, p. 59

*Steps in the Negotiation of Individual Policies*, p. 59  
*Methods of Marketing Insurance*, p. 60  
*Skim Lloyd's of London*, pg. 63

**B. Negotiation and Agency: Insurers' Problems**, p. 66

*Washington Nat'l Ins v. Strickland*, p. 66  
Note, pg. 71  
*Talbot v. Country Life Ins.*, p. 72  
*Maryland Casualty v. J.M. Foster*, pg. 74

Class 6 - February 1 (Th)

*World Trade Center Properties, LLC v. The Travelers*, pg. 80  
Notes, pgs. 82

**C. The Law of Misrepresentation: An Applicant's Problem in Negotiation** p. 86

*Merchants Fire Assurance v. Lattimore*, p. 86  
Notes, pp. 90-95  
Skim statutes, pp. 95-97  
*Funchess v. U.S. Life*, p. 98  
*Thompson v. Occidental Life*, p. 99  
Notes, p. 105

Class 7 – February 5 (M)

*Lettieri v. Equitable Life*, pg. 105  
Notes, pp. 109-110

**Chapter 3 - INTERPRETATION OF INSURANCE CONTRACTS**

**A. General Principles**

*Preliminary Note - Interpretation of Insurance Policies*, p. 111  
*J.A. Brundage Plumbing and Roto-Rooter, Inc. v. Mass. Bay Ins. Co.*, p. 113  
*Montrose Chemical Corporation v. Admiral Ins. Co.*, p. 113  
*A Comment on the Methods of Judicial Interpretation*, p. 115

Class 8 – February 8 (Th)

*Steven v. Fidelity & Casualty Co. of N.Y.*, p. 120  
Notes, pp. 128-130  
*Federal Insurance Co. v. Stroh Brewing Co.*, p. 130  
Note, p. 138

Class 9 - February 12 (M)

*World Trade Center Properties, LLC v. The Travelers*, pg. 138  
Notes, pp. 150-154

**B. Waiver, Estoppel and Other Theories**, p. 154

*Foremost Ins Co. v. Putzier (including Evel Knievel)*, p. 154

Class 10 - February 15 (Th)

*Foremost Ins Co. v. Putzier (including Antonio Guanche)*, p. 158  
Notes 1-3, pp. 164-165  
*Republic Ins. Co. v. Silverton Elevators*, p. 167  
Notes, pp. 171-172

**Chapter 4 - EXTRA-CONTRACTUAL LIABILITY: THE COVENANT OF GOOD FAITH AND FAIR DEALING**

**A. Distinguishing First Party and Third Party Insurance**, p. 173

*Montrose Chemical Corp. v. Admiral Ins. Co.*, p. 173

**B. The Covenant of Good Faith and Fair Dealing**, p. 175

Restatement, Contracts (2d) § 205, p. 175  
*PPG Industries, Inc. v. Transamerica Ins. Co.*, p. 176

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**\*NOTE: SECTIONS C AND D ARE ASSIGNED IN REVERSE ORDER AS SHOWN BELOW**

**D. The Origins - Third Party Cases, p. 198**

*Crisci v. Security Insurance Company*, p. 198

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*Betts v. Allstate Ins. Co.*, p. 205

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**C. Constitutional Limitations, p. 177**

*State Farm Mutual Auto Ins. v. Campbell*, p. 177

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**E. Limiting Third Party Claims, p. 214**

*Murphy v. Allstate Ins. Co.*, p. 214

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**F. The First Party Problem, p. 219**

*Beck v. Farmers Ins.*, p. 219

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**G. Skim Reverse Bad Faith, p. 229**

**H. The Legislative Response**

Skim *The Unfair Practices Act*, p. 231

*State Farm Mutual Automobile Ins. Co. v. Reeder*, p. 233

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**Chapter 5 - LIABILITY INSURANCE**

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*Preliminary Note*, pg. 241

*Aerojet v. Transport Indemnity Co.*, p. 242

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**B. The Insurer's Undertaking**

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2. The Duty to Defend, p. 247  
*Gray v. Zurich Ins.*, p. 247  
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*Fitzpatrick v. American Honda Motor Co*, p. 256

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*Northfield Ins. Co. v. Loving Home Care, Inc.*, p. 263  
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*Buss v. Superior Court*, p. 275  
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*The Duty to Defend -- a Postscript*, p. 285

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**C. The Insured's Undertaking**, p. 294

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*Security Mut. Ins. Co. v. Acker-Fitszsimons*, p. 294  
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2. The Insured's Duty of Cooperation  
*Ogunsuada v. General Accident Ins. Co.*, p. 300  
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3. Intentional Injury  
*Pachucki v. Republic Ins. Co.*, p. 307  
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**D. Problems of Multiple Coverage**, p. 315

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*Montrose Chemical v. Admiral Ins. Co.*, p. 317  
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*American Home Products v. Liberty Mutual*, p.321  
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*Montrose Chemical v. Admiral Ins. Co.*, p. 326  
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2. Stacking of Coverage  
*Employers Ins. Of Wausau v. Granite State Ins. Co.*, p. 340  
*FMC Corp. v. Plaisted & Cos.*, p. 344  
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3. Apportioning Liability, p. 349  
*Owens-Illinois v. United Ins.*, p. 349  
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4. Overlapping and Conflicting Liability Insurance Coverage  
*Preliminary Note*, p. 359

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- Richardson v. Ludwig*, p. 361  
*Carriers Ins. Co. v. American Policyholders*, p. 368
5. A Problem, p. 373

- E. Waiver Agreements, Reservations of Rights, and Lawyer's Obligations**, p. 374  
*CHI of Alaska v. Employers Reinsurance*, p. 375  
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**Chapter 6 - PROPERTY INSURANCE**

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*Schreiber v. Penn. Lumberman's Mut. Ins.*, p. 468
  2. Proof of Loss  
*Nagel-Taylor Automotive v. Aetna*, p. 470  
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**B. Insurer's Defenses**

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*Insurable Interest; A Search for Consistency*, p. 482  
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*Hunter v. State Farm*, p. 492  
*Tublitz v. Glen Falls Ins.*, p. 495  
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2. There Is No Contract  
*Christ Gospel Temple v. Liberty Mutual*, p. 498  
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3. Loss Not Caused by Covered Risk
  - a. Substantive v. Evidentiary Conditions  
*Cochran v. MFA Mut Ins*, p. 502  
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  - b. Implied Exceptions  
*Engel v. Redwood County Farmers Mutual*, p. 504  
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  - c. Concurrent Causation  
*Pan-Am v. Aetna*, p. 509  
*Continental Ins. v. Arkwright Mut. Ins.*, p. 511  
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*Graham v. Public Employees Mut.*, p. 520

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4. The Insured is Disqualified
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*Reid v. Hardware Mut. Ins. Co.*, p. 546  
*Am. Home Assurance v. Harvey's Wagon Wheel*, p. 551  
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- b. ID Fails to Meet a Condition: Increasing Hazard/Vacancy  
*Midwest Office Tech. v. Am. Alliance*, p. 557  
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- c. The Policy Has Been Canceled, p. 563  
*Baker v. St. Paul Fire & Marine Ins.*, p. 563  
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**C. Paying Claims**

- 1. The Amount of Recovery  
*Titus v. Am. West Ins. Co.*, p. 569

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- Notes, pp. 574-579  
*Jefferson Ins. Co. v. Superior Court*, p. 579  
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- 2. Apportionment Among Partial Interests
  - a. Joint Tenants  
*Russell v. Williams*, p. 584
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*Whitney Nat'l Bank of New Orleans v. State Farm Fire & Cas*, p. 587

**D. Subrogation**, p. 599

- Welch Foods, Inc. v. Chicago Title Ins. Co.*, p. 600
- Richard D. Brew v. Auclair Transportation*, p. 603
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- 1. Limitations on Insurer's Rights of Subrogation
  - Sutton v. Jondahl*, p. 606
  - Duell v. Greater New York Mutual Ins. Co.*, p. 608
  - Notes, p. 610
  - Wimberly v. American Casualty*, p. 616
  - Note 2, p. 620
- 2. Interference with Insurer's Subrogation Rights
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## Chapter 7 - PERSONAL INSURANCE

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  - Riner v. Allstate Life Ins.*, p. 629
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  - Mutual Savings Life Ins. v. Noah*, p. 641
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    - Furtado v. Metro. Life Ins. Co.*, p. 647
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- d. Subrogation  
*Shumpert v. Time Ins. Co.*, p. 694

**B. Disability Insurance**

- 2. Implied Terms - The Process of Nature, p. 740  
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- 3. The Scope of Coverage  
*Chalmers v. Metropolitan Life*, p. 748

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- 2. Insurer's Defenses  
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- 3. Permissive Users and the Omnibus Clause  
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