Course Goals and Objectives

This course provides an in-depth examination of claims processing and dispute resolution in the insurance business in both first-party (property, life, etc.) and third-party (liability) insurance. Topics covered include notice of loss, proof of loss, duty to cooperate; negotiation of insurance claims; appraisal; mediation and arbitration of insurance claims; remedies for noncompliance with claims processing obligations; bad faith. The topics will be covered from a national perspective, but special emphasis will also be given to Missouri law.

This course is approved to count as an elective toward the Dispute Resolution Certificate. For more information about the certificate, see http://law.missouri.edu/jd/certificates/dispute-resolution/.

Goals and objectives include acquisition of the following:

- a thorough understanding of the rules of insurance claims processing and dispute resolution, including both the common law, the “law of the insurance contract,” and statutory and administrative regulation;
- familiarity with the skills needed to represent clients successfully during insurance claims processing and in processes through which insurance disputes are resolved;
- the knowledge and skills necessary to (a) determine which rules and authorities apply to a particular situation, (b) analyze transactions and the process of insurance claims processing and dispute resolution, (c) problem-solve in light of the client’s objectives.

Books

Assignments in this course will be primarily readings in statutes, cases, and some other secondary authorities. These will be posted in electronic form on the course website. One book

Course Web Site: TWEN

I will use a course web page on TWEN (The West Education Network). The syllabus and other course materials will be posted on this website. I will also use the portal on the TWEN site to post assignments and other information about the course. I may occasionally send email messages to the email account that you designate when you register with TWEN. Please check your email account regularly to make sure it remains functional during the course.

Course Grade; Class Attendance

Your grade will be calculated as follows: class participation, including performance on skills exercises, 75%; short paper at the end of the term, 25%.

This course will involve a number of skills exercises. Depending on the nature of the exercise, you will be eligible for a number of points on the exercises. At the end of the term, your total points will be summed and scaled for the purpose of determining the 75% portion of your grade. The skills exercises will be connected to a semester-long pre-trial litigation problem; you will be asked to sign a non-disclosure agreement with respect to this problem as a condition of taking the course.

Near the end of the term, you will be asked to write a word-limited paper on an assigned topic; the due date will be the last day of the exam period. The scope of the paper will be roughly equivalent to a one-hour examination question, or one-third of a typical take-home examination for a 3-credit course. The instructions for the paper will state that you are allowed to consult any inanimate materials you wish, meaning you will not be allowed to confer with other persons (including, but not limited to, classmates).

American Bar Association rules require “regular and punctual class attendance” by students. In my past experience, exam performance strongly correlates with class attendance. Thus, I expect you to attend all classes. That being said, I understand that some absences are unavoidable; the common examples are personal illness (if you are contagious, you should not come to class), family health emergencies, professional development activities (such as a job interview), and the obligations of religious holidays. If you anticipate (or have) an unavoidable absence, please give me advance notice (if possible) and a brief explanation. Once you miss four classes for any reason, you should find a time to discuss the situation with me. Upon the fifth unexcused absence, you will receive a penalty on your final grade for the course. Upon the ninth unexcused absence, you will not be allowed to take the final exam, except with the

¹ Disclosure: A sum exceeding any royalties I receive on sales of this book to MU students will be donated to the University of Missouri Foundation for the benefit of law students at the University of Missouri-Columbia School of Law.
permission of the Associate Dean for Academic Affairs. Having five or more unexcused absences creates a presumption of “particularly weak classroom participation.”

It may become necessary for me to cancel a class and schedule a make-up. Although attendance at make-up sessions is expected, your absence from a make-up session will not count as an unexcused absence. Because our class has a small enrollment, if (and only if) we have the consent of everyone in the class, we may be able to implement some special arrangements for rescheduling missed classes.

Policies

Intellectual Pluralism

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (http://osrr.missouri.edu). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Academic Integrity

Academic integrity is fundamental to the activities and principles of both the Law School and the legal profession for which you are preparing to join. All members of the Law School community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Disabilities

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), SS Memorial Union, 882-4696, and then notify either Associate Dean Henson or Denise Boessen in the main office of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.
**Requirement of Consent for Redistribution of Recordings of Classes**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student’s grade.

**Laptops and Cell Phones**

I ask that cell phones be turned off during class, but there are exceptions. For example, if you are a parent or are responsible for a dependent, I understand that you may need to be available at all times (e.g., to deal with an emergency, etc.). If that is your situation, please put your phone on the “vibrate only” mode. There may be other exceptional situations that require a phone to be ready for use.

In that same vein, it is permissible to use laptops in class for note taking and to access Web materials related to the class. Because of the potential for a laptop screen to be distracting to those seated near you, what I expect is that you will not use a laptop during class for non-class purposes (such as checking e-mail, social media sites or other websites, or text messaging) or in any manner disruptive to those around you. This is simply one aspect of a shared value of our law school community -- that we all conduct ourselves professionally, which includes respecting our classmates and our class setting. If your use of a laptop becomes too distracting, you may be instructed to stop using it.

**How to Reach Me**

My office location, phone, email address, and office hours are at the top of this syllabus. One of the best times to reach me is right after class. You can always send me an e-mail, and I will try to respond as soon as I can; if you e-mail me about the course, please mention "Insurance Law" in the subject line in some way so that I will be less likely to miss your e-mail among the many I receive daily. If you need to see me but staying after class or coming in during office hours is not possible, please feel free to stop by at any other time; also, I will make an appointment with you if that would be helpful to your reaching me.

**Schedule of Topics (subject to change)**

[See TWEN for assignments on each topic; the order of coverage is subject to change due to the requirements of the pre-trial litigation problem]
1. An Introduction to Insurance

2. Pre-Payment Claims Processing
   A. An Overview of the Process
   B. Notice of Loss
      1. First-Party Insurance
      2. Third-Party Insurance
   C. Proof of Loss
      1. First-Party Insurance
      2. Third-Party Insurance
   D. Duty to Cooperate (First-Party Insurance)
   E. Duty to Cooperate (Third-Party Insurance)

3. Limitation of Actions

4. Special Issues in Life Insurance
   A. Overview: The Nature of the Process
   B. Identifying the Proper Claimant
   C. Resolving Disputed Claims to Benefits

5. Special Issues in Reinsurance
   A. Overview of the Industry
   B. History of Dispute Resolution in Reinsurance
   C. Arbitration Procedures in Reinsurance
   D. Claims Resolution Issues

6. The Process of Resolving Insurance Claims
A. Negotiation

B. Appraisal
   2. Relationship to Mediation
   3. Relationship to Arbitration
   4. Regulation

C. Mediation
   1. The Process
   2. Special Insurance Issues
   3. Mediation in Mass Losses
   4. Relationship to Appraisal

D. Arbitration
   1. The Process
   2. Special Insurance Issues
   3. McCarran-Ferguson Act and the FAA

7. Bad Faith in Claims Processing & Dispute Resolution
   A. First-Party Insurance
   B. Third-Party Insurance

8. Special Problems of the Primary Carrier-Excess Carrier Relationship

9. Special Problems of Insurance Pleading and Practice