



Basics of Missouri Insurance Law

After suffering damages to residential or commercial property, home and business owners may make claims on their policies to recover for their losses. Below is an overview of Missouri insurance law. Circumstances may vary for each individual, and it is best to seek legal representation for help with your specific claim.

General Considerations

When the language in an insurance policy is ambiguous, the court applies a meaning according to what the insured ordinarily would have understood, as ambiguous provisions are construed against the insurer.¹ If sections of an insurance policy are “inherently inconsistent,” the sections should be construed against the insurer and in favor of the insured.²

Recovery Under a Policy

While there is no traditional bad faith claim under Missouri law, a primary cause of action the insured may file against the insurer is a vexatious refusal to pay claim. Vexatious means “without reasonable or probable cause or excuse.”³ This claim is set forth under Sections 375.296 and 375.420 of the Missouri Revised Statutes, which authorize the award of additional damages in actions involving insurance contracts. Section 375.296 (Additional Damages for Vexatious Refusal to Pay) states:

In any action, suit or other proceeding instituted against any insurance company, association or other insurer upon any contract of insurance issued or delivered in this state to a resident of this state, or to a corporation incorporated in or authorized to do business in this state, if the insurer has failed or refused for a period of thirty days after due demand therefor prior to the institution of the action, suit or proceeding, to make payment under and in accordance with the terms and provisions of the contract of insurance, and it shall appear from the evidence that the refusal was vexatious and without reasonable cause, the court or jury may, in addition to the amount due under the provisions of the contract of insurance and interest thereon, allow the plaintiff damages for vexatious refusal to pay and attorney's fees as provided in Section 375.420. Failure of an insurer to appear and defend any action, suit or other proceeding shall be

¹ Krombach v. Mayflower Ins. Co., 827 S.W.2d 208, 210 (Mo. banc 1992).

² Dibben v. Shelter Ins. Co., 2007 WL 4352324 (Mo. Ct. App. W.D. 2008); Todd v. Missouri United School Ins. Council, 223 S.W.3d 156, 163 (Mo. banc 2007).

³ Hay v. Utica Mut. Ins. Co., 551 S.W.2d 954 (Mo. Ct. App. 1977).

deemed *prima facie* evidence that its failure to make payment was vexatious without reasonable cause.

Section 375.420 (Vexatious Refusal to Pay Claim, Damages for, Exception) states:

[I]f it appears from the evidence that such company has refused to pay such loss without reasonable cause or excuse, the court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not to exceed twenty percent of the first fifteen hundred dollars of the loss, and ten percent of the amount of the loss in excess of fifteen hundred dollars and a reasonable attorney's fee; and the court shall enter judgment for the aggregate sum found in the verdict.

Section 375.296 sets forth how to determine whether or not there was a vexatious refusal by the insurer without a reasonable cause or excuse, while Section 375.420 emphasizes the remedies available to the insured.

For a claim of vexatious refusal to pay, the insured has to show there is an insurance policy, the insurer refused to pay, and the insurer's refusal was without reasonable cause or excuse.⁴ Some instances where the courts have awarded vexatious refusal penalties against an insurer are:

1. Where there was a continued refusal to pay by the insurer even after it became aware it had no meritorious defense;⁵
2. Where the insurer did not conduct an adequate investigation and did not state a ground for denial;⁶
3. Where the insurer has engaged in disparate treatment of coinsureds;⁷
4. Where the insurer's refusal is based upon suspicion and not reasonable inference from established facts;⁸ and
5. Where the insurer's refusal to pay was not based on supporting facts at the time, even if an investigation did develop such facts afterwards.⁹

Thus, it appears there is an emphasis on the importance of the insurer conducting an adequate investigation into the claim, having supporting facts and substantiation prior to a refusal to pay, stating a ground for denial, and paying once it becomes aware it has no meritorious defense. Courts have also stated that the determination whether an

⁴ Dhyne v. State Farm Fire and Cas. Co., 188 S.W.3d 454, 457 (Mo. 2006).

⁵ Ireland v. Manufacturers & Merchants Indem. Co., 298 S.W.2d 529, 534 (Mo. Ct. App. 1957).

⁶ Allen v. State Farm Mut. Auto. Ins. Co., 753 S.W.2d 616, 620 (Mo. Ct. App. 1988).

⁷ Russell v. Farmers & Merchants Ins. Co., 834 S.W.2d 209, 222 (Mo. Ct. App. 1992).

⁸ Laster v. State Farm Fire and Cas. Co., 693 S.W.2d 195 (Mo. Ct. App. E.D. 1985).

⁹ Still v. Travelers Indem. Co., 374 S.W.2d 95 (Mo. 1963) (citing Buffalo Ins. Co. v. Bommarito, 42 F.2d 53, 57 (8th Cir. 1930)).

insurer, who has refused to pay a claim, has acted with a vexatious attitude is a question of fact that is properly before the jury.¹⁰

Whether or not refusal is vexatious or reasonable must be determined by the situation as presented to the insurer at the time it was supposed to pay.¹¹ This discourages an insurer from simply refusing to pay, hoping that an investigation will unearth supporting facts and validate the decision later on. As such, an insurer's refusal to pay based on a suspicion that is unsupported by substantial facts is considered vexatious.¹² An insured may still pursue a claim for vexatious refusal against the insurer even after the insurer pays the policy limits, as interest and attorney's fees may still be at issue.¹³ For vexatious penalties to be assessed against an insurer, there may not have to be an express refusal to pay. Other actions, such as continued investigation or ambivalence, may be found to be equivalent to a refusal.¹⁴

The statute of limitations on a vexatious refusal claim, which is a quasi-tort cause of action, is five years. RSMo. Section 431.030, provides: "All parts of any contract or agreement hereafter made or entered into which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted, shall be null and void." This statute is applicable to insurance contracts governed by Missouri law. Accordingly, if an insurance contract contains a period of limitations contrary to this statute, it is against public policy and will be unenforced by the court.¹⁵ The insured may also pursue a traditional breach of contract claim, which has a limitations period of ten years. In that instance, the insured may argue that the insurer breached the contract by refusing to pay what the home or business was worth, even though it had contracted to do so.

Defenses

¹⁰ Oliver v. Cameron Mut. Ins. Co., 866 S.W.2d 865, 871 (Mo. Ct. App. E.D. 1993); Hopkins v. American Eco. Ins. Co., 896 S.W.2d 933, 944 (Mo. Ct. App. W.D. 1995).

¹¹ Russell v. Farms & Merchant's Insur. Co., 834 S.W.2d 209, 221 (Mo. Ct. App. S.D. 1992).

¹² Laster v. State Farm Fire and Cas. Co., 693 S.W.2d 195, 197 (Mo. Ct. App. 1985).

¹³ Dhyne v. State Farm Fire and Cas. Co., 188 S.W.3d 454 (Mo. 2006), as modified on denial of reh'g, (Apr. 11, 2006).

¹⁴ Desmond v. American Ins. Co., 786 S.W.2d 144, 148 (Mo. Ct. App. W.D. 1989) (considering whether an 18-month delay in paying life insurance proceeds was vexatious); Shafer v. Automobile Club Inter-Insurance Exchange, 778 S.W.2d 395 (Mo. Ct. App. S.D. 1989) (ruling that a failure to reply for 13 months was sufficient to find for vexatious penalties).

¹⁵ Brucker v. Georgia Casualty Co. 32 S.W.2d 1088 (1930); Frank Powell Lumber Co. v. Federal Ins. Co. 817 S.W.2d 648 (Mo. Ct. App. S.D. 1991); Asel v. Order of U.C.T.A. 197 S.W.2d 639 643 (1946).

Generally, for a claim under a policy to succeed, there must be coverage under that policy. The insured has the burden of showing that the loss and damages are covered by the insurance policy.¹⁶ An insurer may argue that no coverage exists for the loss under the policy issued to the insured.

In defense to an action for vexatious refusal to pay, an insurer can show that it has a reasonable cause or excuse to believe there is no liability under the policy and that it has a meritorious defense.¹⁷ An insurer may show the court that there is an open question of law or fact and insist that there be a judicial determination made in regard to those questions.¹⁸ When there is evidence of a vexatious and recalcitrant attitude by the insurer, however, the existence of an open question of law or fact does not preclude vexatious penalties.¹⁹ In fact, “[t]his language from *DeWitt* has been characterized as relaxing the burden necessary to support an award of vexatiousness.”²⁰ Moreover, direct and specific evidence showing vexatious refusal is not required, as there may be a finding of vexatious delay upon a “general survey and consideration of the whole testimony and all the facts and circumstances in connection with the case.”²¹

An insurer may also argue that the insured’s conduct and actions should lead the court to find a favorable construction of the policy language and its meaning.²² An insurer can point to misrepresentations that are made by an insured in the claim or proof of loss.²³ Furthermore, if an insured fails to comply with the policy’s requirements, such as failing to give timely notice, this may be a violation of a condition precedent to coverage, and there may be a finding of no vexatious refusal.²⁴

¹⁶ American States Insur. Co. v. Mathis, 974 S.W.2d 647, 649 (Mo. Ct. App. 1998).

¹⁷ Wood v. Safeco Insurance Co. of America, 980 S.W.2d 42, 55 (Mo. Ct. App. 1998).

¹⁸ Hocker Oil Co., Inc. v. Barker-Phillips-Jackson, Inc., 997 S.W.2d 510, 523 (Mo. Ct. App. 1999) (quoting *Wood v. Cafeco Ins. Co. of America*, 980 S.W.2d 43, 55 (Mo. Ct. App. 1998); *Hay v. Utica Mut. Ins. Co.*, 551 S.W.2d 954 (Mo. Ct. App. 1977) and *Shirkey v. Guarantee Trust & Life Ins. Co.*, 258 S.W.3d 885 (Mo. Ct. App. W.D. 2008)).

¹⁹ *DeWitt v. American Family Mut. Ins. Co.*, 667 S.W.2d 700, 710 (Mo. banc 1984); *Kimpton v. Spellman*, 351 Mo. 674, 173 S.W.2d 886, 893 (1943); *Berry v. Fed. Kemper Ins. Co.*, 621 S.W.2d 948, 953-54 (Mo. Ct. App. 1981); *Still v. Travelers Indemnity Co.*, 374 S.W.2d 95, 103 (Mo. 1963); *Lemay Ferry Bank v. New Amsterdam Cas. Co.*, 347 Mo. 793, 149 S.W.2d 328, 331 (Mo. 1941).

²⁰ *Pace Prop., Inc. v. American Mfrs. Mut. Ins. Co.*, 918 S.W.2d 883, 888 (Mo. App. E.D. 1996).

²¹ *DeWitt*, 667 S.W.2d at 710; *Columbia Mut. Ins. Co. v. Long*, 258 S.W.3d 469, 477-78 (Mo. Ct. App. W.D. 2008).

²² *Howard v. Aetna Life Ins. Co.*, 164 S.W.2d 360, 366 (Mo. 1942).

²³ *Childers v. State Farm Fire & Cas. Co.*, 799 S.W.2d 138 (Mo. Ct. App. E.D. 1990).

²⁴ *Columbia Union Nat. Bank v. Hartford Accident and Indemnity Co.*, 669 F.2d 1210, 1215 (8th Cir. 1982)(applying Missouri law).

Damages

If there is a total loss, the insurer is obligated to pay the face market value of that property, less depreciation.²⁵ Depreciation will apply from the issuance of the policy to when the loss occurred.²⁶

Damages may be available against an insurer who has failed or refused to make payment thirty days after due demand without substantial justification or a legitimate reason. If there is evidence showing that the refusal was vexatious and without reasonable cause, the court or jury may decide to award the plaintiff damages for vexatious refusal to pay and attorney's fees. This awarded amount would be in addition to what the plaintiff is entitled to under the provisions of the insurance contract and for interest. Moreover, as stated under the statute, an insurer's failure to appear and defend an action plaintiff has commenced will be deemed *prima facie* evidence that its failure to make payment was vexatious without reasonable cause.

Damages that are recoverable in a vexatious refusal claim are limited to the amount of loss, interest, statutory penalty of specified percentage of loss, and reasonable attorneys' fees.²⁷ Any punitive damage award or statutory penalty is subject to the amount the statute allows.²⁸ As such, under Missouri law, punitive damages cannot be recovered under a vexatious refusal to pay action.

Interest is available in actions on insurance contracts. "Creditors shall be allowed to receive interest at the rate of nine percent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts."²⁹ Section 408.020 generally applies to insurance policies generally,³⁰ and once it applies, an award of prejudgment interest is compelled as a matter of right, and is not a matter for trial court discretion.³¹ Moreover, the application of the statute is mandatory when the damages involved are liquidated.³² Liquidated damages refers to damages that are due and "fixed and determined or readily ascertainable by computation or a recognized standard."³³ As long as the claim is liquidated, interest will accrue even if the amount of damages is in dispute. "The mere fact that a party denies liability or defends a claim

²⁵ Huth v. General Acc. & Life Assur. Corp., Ltd., 536 S.W.2d 177 (Mo. Ct. App. 1976).

²⁶ Id.

²⁷ Baker v. State Farm Mut. Auto. Ins. Co., 846 F.2d 495, 497 (8th Cir. 1988) (citing Mo. Rev. Stat. Section 375.420 (1986)).

²⁸ Id.

²⁹ V.A.M.S. § 408.020.

³⁰ Schultz v. Queen Ins. Co., 399 S.W.2d 230, 236 (Mo. App. E.D. 1965).

³¹ Baris v. Layton, 43 S.W.3d 390, 398 (Mo. App. E.D. 2001).

³² Huffstutter v. Mich. Mut. Ins. Co., 778 S.W.2d 391, 395 (Mo. App. E.D. 1989).

³³ J.R. Waymire Co. v. Antares Corp., 975 S.W.2d 243, 248 (Mo. App. W.D. 1998).

against him, or even the existence of a bona fide dispute as to the amount of the indebtedness, does not preclude recovery of interest.”³⁴

The aforementioned Sections 375.296 and 375.420 authorize the award of additional damages if the plaintiff can prove the insurer vexatiously refused to pay a loss without reasonable cause or excuse. A plaintiff may be able to recover additional damages up to 20% of the first \$1,500 of his or her loss, 10% of sums in excess of \$1,500, as well as reasonable attorneys’ fees. “When … damages are shown by specific ascertainable values, and one party has failed to carry its burden to prove otherwise, there is no reason why summary adjudication should not include an award of damages.”³⁵

Other Considerations

Appraisal

A common provision in property damage insurance policies is one stating that if the insured and the insurer do not agree upon the amount of loss, then either the insured or the insurer can make a written demand for an appraisal. If a policy contains such a provision, it will also usually establish how the appraisers are selected and how the appraisal is conducted.

The enforceability of the provision, however, is not always certain. One Court of Appeals has held that an appraisal would be unnecessary where the insured elects to repair his house, and that the insured has a right to compel the insurer to repair or replace the house rather than accept damages as determined by an appraiser.³⁶

When a provision for compulsory appraisal is properly invoked, it acts as a condition precedent to an action on the policy. If, however, an inadequate appraisal has occurred, through no fault of the insured, he or she may still be able to pursue an action on the policy.³⁷ Furthermore, an appraisal acts as a condition precedent only when a party makes a demand for appraisal.³⁸ The insurer’s right to demand an appraisal may be waived by a denial of all liability.³⁹ If an insured has agreed to receive a sum of money totaling the loss and both the insured and the insurer participate in an appraisal

³⁴ Twin River Constr. Co. v. Pub. Water Dist. No. 6, 653 S.W.2d 682, 695 (Mo. App. E.D. 1983) (quoting 47 C.J.S. Interest and Usury, section 21, at 62).

³⁵ Cornejo v. Crawford County, 153 S.W.3d 898, 904 (Mo. Ct. App. S.D. 2005).

³⁶ Hueser v. Shelter Mut. Ins. Co., 901 S.W. 2d 138 (Mo. App. W.D. 1995).

³⁷ Security Printing Co. v. Connecticut Fire Ins. Co. of Hartford, Conn., 209 Mo. App. 422, 240 S.W. 263 (1922).

³⁸ Yankoff v. Allied Mut. Ins. Co., 289 S.W.2d 471 (Mo. Ct. App. 1956).

³⁹ Carp v. Queen Ins. Co., 104 Mo. App. 502, 79 S.W. 757 (1904).

where neither party questions the appraiser's findings on damages, the result of the appraisal is conclusive.⁴⁰

Recoverable Costs

If the policy coverage is defined as repair or replacement cost, the court may find that the insured may not recover such costs unless he or she actually repairs or replaces the property.⁴¹ Thus, when the policy unambiguously states that the insurer's liability is limited to the cost of repair or replacement of damaged property, the insurer's liability is capped at the amount it takes to return the property to substantially the same physical or mechanical condition prior to the loss. Unless repairs to the insured's property are inadequate, any reduction in market value of the repaired property is unrecoverable.⁴²

In partial loss claims, Missouri cases have prohibited the insurer from paying less than the actual cash value or replacement cost, withholding depreciation.⁴³ Courts have found that depreciation cannot be withheld from payment of total damages.⁴⁴

Proof of Claim or Loss

"Proofs of loss are exacted to enable the insurance company to determine whether the facts . . . were such that it ought to indemnify the insured."⁴⁵ Statements in a proof of loss are binding against the insured and an insurance company may rely on such statements until contradicted or explained by the insured."⁴⁶

As set forth by one Court of Appeals:

Missouri law has departed from ... harsh interpretation of insurance contracts on the particular issue of delayed notice. Specifically, the Director of Insurance, as authorized under § 374.045, RSMo 1994, adopted the following regulation to aid the interpretation of sections of the Unfair Trade Practice Act: No insurer shall

⁴⁰ Abercrombie v. Allstate Ins. Co., 891 S.W.2d 838 (Mo. Ct. App. W.D. 1994).

⁴¹ Miller v. Farm Bureau Town & Country Ins. Co. of Missouri, 6 S.W.3d 432 (Mo. Ct. App. S.D. 1999).

⁴² Lupo v. Shelter Mut. Ins. Co., 70 S.W.3d 16 (Mo. Ct. App. E.D. 2002); Camden v. State Farm Mut. Auto. Ins. Co., 66 S.W.3d 78 (Mo. Ct. App. E.D. 2001).

⁴³ See McMillin, 950 S.W.2d at 248; Abercrombie v. Allstate Insurance Co., 891 S.W.2d 838 (Mo. App. W.D. 1994); R.S.Mo. § 379.150.

⁴⁴ See Miller v. Farm Bureau Town & Country Ins. Co. of Missouri, 6 S.W.3d 432 (Mo. App. S.D. 1999); Portell v. Farm Bureau Town & Country Ins. Co. of Missouri, 888 S.W.2d 728 (Mo. App. E.D. 1994); and Landes v. State Farm Fire & Cas. Co., 907 S.W.2d 349 (Mo. App. W.D. 1995).

⁴⁵ Wall v. Continental Cas. Co., 111 Mo. App. 504, 520-521, 86 S.W. 491, 496 (1905).

⁴⁶ Rossman v. G.G.C. Corp. of Missouri, 596 S.W.2d 469, 472 (Mo. App. 1980).

deny any claim based upon the insured's failure to submit a written notice of loss within a specified time following any loss, unless this failure operates to prejudice the rights of the insurer. 20 C.S.R. 100-1.020.⁴⁷

"Furthermore, a line of Missouri cases have held that where the insured either fails to file a proof of claim or delays in doing so, the insurer must allege and prove that prejudice resulted from the delay in order to sustain the defense of delayed notice."⁴⁸

Business Interruption and Lost Profits

Actions based in contract, tort, and business interruption allow for the recovery of lost profits.⁴⁹ When estimates of lost profits are not remote and speculative, but instead "are made reasonably certain by proof of actual facts, with present data for a rational estimate of their amount," anticipated profits of a commercial business may be recovered.⁵⁰ "[P]roof of income and expenses to the business for a reasonable time anterior to its interruption, with a consequent establishing of net profits during the previous period, is indispensable."⁵¹

A policy may provide coverage for damages from business interruption. With proper proof, such as business income and expenses information for a period of time prior to business interruption, even a new business may recover for lost profits.⁵²

In instances where "the evidence weighed in common experience demonstrates that a substantial pecuniary loss has occurred [but there is no exact proof] ... it is reasonable to require a lesser degree of certainty as to the extent of the loss, leaving a greater degree of discretion to the court or jury."⁵³

⁴⁷ Tuterri's, Inc. v. Hartford Steam Boiler Inspection and Ins. Co., 894 S.W.2d 266, (Mo. Ct. App., W.D., March 14, 1995)

⁴⁸ Id. (citing Schultz v. Queen Ins. Co., 399 S.W.2d 230, 234 (Mo. App. 1966); Katz Drug Co. v. Commercial Standard Ins. Co., 647 S.W.2d 831, 836 (Mo. App. 1983); May v. Maryland Casualty Corp., 792 F.Supp. 63, 67 (E.D.Mo.1992); Greer v. Zurich Ins. Co., 441 S.W.2d 15, 31 (Mo. 1969); Dickhans v. Missouri Property Ins. Placement Facility, 705 S.W.2d 104, 106-07 (Mo. App. 1986).

⁴⁹ Ameristar Jet Charter, Inc. v. Dodson International Parts, Inc., 155 S.W.3d 50, 55 (Mo. banc 2005).

⁵⁰ United Fire and Cas. Co. v. Historic Preservation Trust, 265 F.3d 722, 730 (8th Cir. 2001); Coonis v. Rogers, 429 S.W.2d 709, 713-14 (Mo. 1968).

⁵¹ Coonis, 429 S.W.2d at 714.

⁵² United Fire, 265 F.3d at 730; Indep. Bus. Forms, Inc. v. A-M Graphics, Inc., 127 F.3d 698, 703 (8th Cir. 1997).

⁵³ Gasser v. John Knox Village, 761 S.W.2d 728, 731 (Mo. Ct. App. 1988).