

BAD FAITH BLOG

# Missouri Vexatious Refusal to Pay Award Stands in Face of Insurance Companies Contingent Attack

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Summary: Stewart Title Guarantee Company provided title insurance to Randy Spalding for nearly 420 acres in Cass County, Missouri in the amount of \$1.7 million. It also provided title insurance coverage to Paul Estes for a one acre tract in the middle of the 428 acres, which Spalding and others were trying to develop. Stewart Title's investigation showed that Estes had the superior claim, but the value assigned by Stewart Title Guarantee Company was \$10,000.00 whereas Paul Estes demanded payment of \$387,000.00. After a jury trial, the circuit court entered judgment in favor of Spalding in the amount of \$1,100,000.00 on the policy, vexatious penalties in the amount of \$110,150.00, and attorney's fees in the amount of \$81,000.00. The court rejected Stewart Title's appeal and affirmed the judgment.

WD76369 (Mo.App.Ct., September 23, 2014)

Stewart Title's primary point on appeal was that the claim was governed by Missouri's five-year statute of limitations rather than the standard ten-year statute of limitations recognized for suits on insurance policy contracts. Stewart Title's argument was that on pure indemnity contracts a five-year statute governs. The court easily dealt with that issue stating that the claim had been brought at the earliest possible date and that no matter which statute of limitations applied, suit was filed less than five years after Spalding's breach of contract claim accrued. The court found that the "claim for breach of contract did not accrue until Stewart Title allegedly failed or refused to adequately compensate [the policy holder] for 'the actual monetary loss or damage' as required under the title insurance policy." Before that time, the policyholder had no reason to sue. For that reason "Spalding's claims would have been timely under both the five and ten-year statute of limitations in that it was filed less than five years after Stewart Title's letter of July 3, 2007." (Slip Op. at 8)

Stewart Title made other claims on appeal, which were also rejected by the Court of Appeals. As noted above, the amount of the vexatious penalty award was \$110,150.00 and the attorney's fee award was \$81,000.00, slightly less than \$200,000.00 of what was nearly a \$1.3 million judgment. The Court of Appeals noted that Stewart Title's attack on the vexatious refusal to pay claim was contingent on the Court's ruling on the breach of contract claim. Only if the court reversed "the circuit court's judgment regarding the breach of contract claim," would it "necessarily have to reverse the circuit court's judgment on the vexatious refusal to pay claim." The Court of Appeals simply stated in a footnote that because it was affirming the circuit court's judgment on the breach of contract claim, it would not consider that point.

Stewart Title's defense against the vexatious refusal to pay claim may have been proper. However, it was not sufficient to require the appellate court to address the merits of the vexatious refusal to pay claim. The lesson for counsel for policyholders and for insurance carriers is that an attack waged against a vexatious refusal to pay award in Missouri needs to be directed to that claim rather than making it contingent on the court's ruling on other issues presented on appeal.

By Anthony L. Martin

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