

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DRURY COMPANY,)	No. ED100320
Respondent/Cross-Appellant,)	
)	
vs.)	
)	
MISSOURI UNITED SCHOOL)	Appeal from the Circuit Court of
INSURANCE COUNSEL, Appellant,)	Cape Girardeau County
)	
and)	Honorable Benjamin F. Lewis
)	
JACKSON R-2 SCHOOL DISTRICT,)	
Cross-Respondent,)	
)	
and)	
)	
WARNER-NEASE-BOST)	
ARCHITECTS, INC., Defendant.)	Filed: March 25, 2014

Missouri United School Insurance Counsel (“MUSIC”) appeals the judgment of the Circuit Court of Cape Girardeau County in favor of Drury Company (“Drury”) on its claims for breach of contract and vexatious refusal to pay pursuant to sections 375.296 and 375.420. Drury’s claims arose out of its work as a subcontractor on a construction project for Jackson R-2 School District (the “School District”) and MUSIC’s denial of Drury’s claim under an insurance policy MUSIC issued to the School District.

MUSIC argues the trial court erred in: (1) granting Drury’s motion for summary judgment because Drury’s loss is excluded from coverage under the policy; (2) granting summary judgment for Drury based on the “ensuing loss” clause in the policy’s faulty workmanship exclusion; (3) awarding damages, including attorneys’ fees, to Drury under the vexatious refusal to pay statutes; (4) denying MUSIC’s motion to dismiss Drury’s claims for lack of standing; and (5) denying MUSIC’s motion for continuance of the hearing on Drury’s motion for summary judgment until after substantive depositions were taken in the case. Drury cross-appeals, asserting the trial court erred in dismissing its claim against the School District for breach of contract.

AFFIRMED.

Division Three Holds:

- 1) The trial court did not err in denying MUSIC’s motion to dismiss because Drury is a third-party beneficiary of the policy and has standing to raise its claims against MUSIC.

- 2) MUSIC is liable for Drury's ensuing loss from "rain, snow, [or] sleet" regardless of whether Drury's workmanship was faulty. Accordingly, the trial court did not err in granting summary judgment for Drury on the basis that the policy covered Drury's loss.
- 3) The trial court did not err in awarding damages to Drury for vexatious refusal to pay.
- 4) MUSIC's fifth point on appeal and Drury's sole point on cross-appeal are denied as moot.

Opinion by: Angela T. Quigless, J.

Mary K. Hoff, P.J., Kurt S. Odenwald, J., Concur.

Attorney for Appellant: Stefan J. Glynnias and Lawrence J. Wadsack, Co-Counsel

Attorney for Respondent: Willard D. McCarter and Edward V. Crites

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.