

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JEFFREY HENRY, et al.,**

**Appellants,**

**v.**

**FARMERS INSURANCE COMPANY, INC.,**

**Respondent.**

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DOCKET NUMBER WD76953

**Date: July 22, 2014**

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Appeal from:  
Platte County Circuit Court  
The Honorable Owens L. Hull, Jr., Judge

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Appellate Judges:  
Division One: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and Karen King Mitchell, Judges

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Attorneys:  
Bruce B. Brown, Kearney, MO, for appellant.  
Justin S. Chapell, Bradley M. Zaffiri, Thomas M. Ward, St. Louis, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

JEFFREY HENRY, et al.

**Appellants,**

v.

FARMERS INSURANCE COMPANY, INC.,

**Respondent.**

WD76953

Platte County

Before Division One Judges: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and Karen King Mitchell, Judges

Jeffrey Henry and Elizabeth Edmundson (collectively, "Appellants") appeal from the summary judgment in favor of Farmers Insurance Company, Inc., ("Farmers") on their petition for declaratory judgment, attorney's fees, and breach of fiduciary duty. Appellants contend the circuit court erred in granting Farmers' summary judgment motion because: (1) their declaratory judgment claim was not moot; (2) they demonstrated special circumstances entitling them to attorney's fees; and (3) they established the requisite harm to support their breach of fiduciary duty claim. Appellants further assert that the court erred in denying their motion for summary judgment and in ruling that Farmers did not have a legal duty to train its agents on the specific holdings of two Missouri insurance cases.

**AFFIRMED.**

**Division One holds:**

(1) The court did not err in granting Farmers' summary judgment motion on Appellants' declaratory judgment claim. In their declaratory judgment claim, Appellants requested only the coercive relief of an order compelling Farmers to produce the claims file. Farmers' subsequent production of the claims file rendered this claim moot.

(2) The court did not err in granting Farmers' summary judgment motion on Appellants' attorney's fees claim because the claim fails as a matter of law. Appellants did not demonstrate special or unusual circumstances that would justify departing from the American Rule that each party is to bear its own attorney's fees. Moreover, to obtain attorney's fees under any exception to the American Rule, the litigant must be the prevailing party, which Appellants were not.

(3) The court did not err in granting Farmers' summary judgment motion on Appellants' breach of fiduciary duty claim because the claim fails as a matter of law. Appellants did not demonstrate any pecuniary harm or damage as a result of Farmers' alleged breach. Pecuniary damage is an essential element of a breach of fiduciary duty claim; therefore, nominal damages will not be presumed. Additionally, Appellants failed to establish a claim for emotional distress damages, because they did not offer any evidence indicating that their emotional distress was medically diagnosable and significant.

(4) Our determination that Appellants failed to establish any recoverable damages disposes of their point on appeal that the court erred in finding that Farmers had no duty to train its agents regarding Missouri case law.

(5) Because we find that Appellants' attorney's fees and breach of fiduciary claims fail as a matter of law, we need not address Appellants' point on appeal that the court erred in denying their motion for partial summary judgment on those claims.

**Opinion by: Lisa White Hardwick, Judge**

July 22, 2014

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