

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ARCH INSURANCE COMPANY,**

**Respondent,**

**v.**

**SUNSET FINANCIAL SERVICES, INC.,**

**Appellant.**

---

**DOCKET NUMBER WD78337**

**Date: September 29, 2015**

---

Appeal from:  
Jackson County Circuit Court  
The Honorable James D. Youngs, Judge

---

Appellate Judges:  
Division Three: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Anthony Rex Gabbert, Judges

---

Attorneys:  
Laurence R. Tucker, Kansas City, MO; Wilbur L. Tomlinson, St. Louis, MO for  
respondent.  
Eric S. Johnson, Kansas City, MO for Appellant.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

**ARCH INSURANCE COMPANY**

**Respondent,**

**v.**

**SUNSET FINANCIAL SERVICES, INC.,**

**Appellant.**

WD78337

Jackson County

Before Division Three: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Anthony Rex Gabbert, Judges

Sunset Financial Services (“SFS”) appeals the circuit court’s grant of summary judgment in favor of Arch Insurance Company (“Arch”) based on a determination that Arch had no duty to indemnify SFS for an arbitration award. SFS contends the circuit court erred in finding that indemnity coverage was barred by an insurance policy exclusion. SFS asserts that because the underlying arbitration claims were independent of any refusal to pay, the insolvency exclusion could not apply to bar coverage. SFS further contends the circuit court erred in *sua sponte* granting Arch summary judgment on SFS’s counterclaim for vexatious refusal to indemnify.

**AFFIRMED.**

Division Three holds: An insurer’s duty to indemnify an insured is determined by the facts as they are established at trial or as they are finally determined by some other means. Because the claims in the underlying arbitration were factually predicated on a refusal to pay, the policy exclusion applied to bar indemnity coverage. Furthermore,

because there cannot be a claim for vexatious refusal to indemnify when the insurer has no duty to indemnify, the circuit court did not err in *sua sponte* granting Arch summary judgment on SFS's counterclaim.

Opinion by: Lisa White Hardwick, Judge

**September 29, 2015**

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**