

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

ADVANTAGE BUILDINGS & EXTERIORS, INC.,

Respondent

v.

MID-CONTINENT CASUALTY COMPANY.

Appellant

DOCKET NUMBER WD76880

DATE: September 2, 2014

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Wesley Brent Powell, Judge

Appellate Judges:

Division Two
Victor C. Howard, P.J., James Edward Welsh, and Anthony Rex Gabbert, JJ.

Attorneys:

Vincent O'Flaherty, Kansas City, MO	Counsel for Appellant
Robert Adams, Kansas City, MO	Co-Counsel for Appellant
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Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**ADVANTAGE BUILDINGS & EXTERIORS, INC., Respondent, v.
MID-CONTINENT CASUALTY COMPANY, Appellant**

WD76880

Jackson County

Before Division Two Judges: Howard, P.J., Welsh, and Gabbert, JJ.

Advantage Buildings & Exteriors, Inc. brought suit against its commercial general insurer, Mid-Continent Casualty Company, for bad-faith failure to settle an underlying lawsuit against Advantage. The circuit court entered judgment on a jury verdict finding in favor of Advantage and awarding it both compensatory and punitive damages. Mid-Continent appeals.

Affirmed in part. Reversed and remanded in part.

Division Two holds:

The judgment as to Mid-Continent's liability is affirmed. Mid-Continent, having failed to provide an effective reservation of rights, was liable on the policy to its policy limits, and, thus, the court did not err in submitting the bad-faith claim to the jury. Mid-Continent's contention that the circuit court erred in not applying Oklahoma law to Advantage's bad-faith claim is rendered moot by this holding. The circuit court did not err in excluding evidence of its earlier declaratory judgment ruling that the underlying claims against Advantage were not covered by Advantage's policy or in failing to submit Mid-Continent's proffered instruction stating that Mid-Continent had no duty to indemnify Advantage on those claims. The earlier declaratory judgment ruling was irrelevant because Mid-Continent was liable on its policy, despite the terms of the policy, because of its failure to issue an effective reservation of rights.

The judgment is reversed and remanded for a retrial on the issue of the amount of compensatory damages and liability and amount, if any, for punitive damages. The circuit court erred in submitting a jury instruction which indicated that the jury could award an amount of punitive damages in the first stage of the bifurcated trial. The circuit court also erred in submitting the first-stage verdict form which included no limiting language indicating that the damages award was for *compensatory* damages only. Mid-Continent was prejudiced by both these errors, and a new trial as to the amount of *both* compensatory and punitive damages is required so that the *same jury* may determine both the liability for and the amount of punitive damages, pursuant to section 510.263. This resolution renders moot Mid-Continent's claims of error in the denial of its motions for set-off and for remittitur, as well as its claim that Advantage failed to make a submissible case on punitive damages.

Opinion by James Edward Welsh, Judge

September 2, 2014

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