



Insurer's Exclusion of Uninsured Motorist Coverage for Failure to Provide Notice

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Are notice provisions within a policy valid and enforceable? Can an insurer deny coverage for lack of timely notice? The simple answers to both questions are in the affirmative. However, the denial of coverage is not automatic. When denying coverage, the insurer must take an extra step and prove prejudice by the insured's delay. This article deals with very general principles of the requirement of "timely notice," provides insight on each party's burden of proof, and details some key steps for an insurer's successful exclusion of uninsured motorist coverage under the notice provision.

It is well accepted under Missouri law that an insured's "substantial compliance" with a policy's notice requirement is sufficient and a failure to comply in some immaterial respect does not justify the avoidance of an insurer's liability. The Missouri Supreme Court has laid out two alternative doctrines in which an insured's failure to provide timely notice might be excused under certain circumstances. The first doctrine is the "excuse of incapacity," which means the very accident insured against leaves the insured incapacitated to the extent it is impossible for him to provide timely notice. The second doctrine is that an insured can show "substantial compliance" with a policy's notice provisions, thereby excusing literal performance.

Excuse of Incapacity

An insurance company cannot deny coverage on the basis of late notice if an insured can successfully invoke the excuse of incapacity. If an insured can establish sufficient incapacitation after an accident, the question becomes whether notice was provided within a reasonable time after the incapacity ended. Prejudice to the insurer is one factor in the overall determination of whether or not the insured provided notice in a reasonable time after the end of the incapacity. Thus, in an incapacity analysis the insured bears the burden of proof with regard to (1) exactly when the incapacity ended, and (2) his compliance with the notice

provisions. The insured must meet its burden before the burden passes on to the insurer to prove prejudice. Factors by which to “prove” prejudice are detailed in the following section and apply equally to an insurer’s prejudice with regard to incapacity.

Substantial Compliance

In order to determine whether or not an insured was in “substantial compliance” with a particular policy’s notice provision, an insurer must prove it was prejudiced by the delay in notice. Here, the insured has the burden to prove notice was given within a “reasonable time.” It becomes the insurer’s burden to prove just how it was prejudiced. Whether or not prejudice exists, is almost always a question of fact. The proof submitted must be specific and not conclusory. For example, an insurer must present facts pertaining to what defenses *may* have existed to an insured’s claims had notice been prompt. It is critical for an insurance company to establish a factual discrepancy in what information is available to the insurer presently, as opposed to what information may have been available had the notice complied with the policy.

Prejudice

An insurer can show it was prejudiced by arguing inability to: (1) go out to the scene of the alleged accident to thoroughly investigate, (2) observe the vehicle(s) prior to any repairs, (3) interview any potential witnesses who would certainly have a better recollection immediately following the accident as opposed to possibly communicating years later, (4) interview party(s) involved immediately following accident, (5) perform any accident reconstruction, (6) check scene for debris or skid marks, (7) interview law enforcement, (8) secure any recorded statement(s), (9) secure any relevant photos, and/or (10) ascertain law enforcement’s recollection of any party(s) statements/demeanor at scene. Furthermore, the insurer can argue that witnesses may have moved or contact information is no longer valid. Essentially, the insurer must highlight how the passing length of time has hindered an adequate investigation with as many facts as possible.

Notice provisions are enforceable and valid in Missouri. To find otherwise would place an insurer at a complete disadvantage with regard to performing any type of investigation into the facts giving rise to a particular accident. Simply because an insured substantially complies with his policy, does not end the analysis with regard to coverage. If an insurer can prove it was prejudiced, it can deny coverage. This burden is not unascertainable and is certainly a question of fact. Most of these notice cases are very fact specific. An insurer must present as many factors as possible differentiating what information is currently known as opposed to facts, which could potentially have been present for an insurer to prepare its defense. Successfully highlighting the aforesaid difference creates a very solid and persuasive argument that without the requisite notice dictated under the policy, coverage must be denied.

*For further research into this topic, the following cases provide analyses of incapacity, substantial compliance and/or proving prejudice.

Tresner v. State Farm Insurance Company, 913 S.W.2d 7 (Mo. banc 1995)

Farm Bureau Town and Country Insurance Company of Missouri v. Rogers, 959 S.W.2d 880 (Mo. App. S.D. 1997)

Weaver v. State Farm Mutual Auto Insurance Company, 936 S.W.2d 818 (Mo. Banc 1997).

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