



Take Notice

An Injury and Insurance Newsletter for Friends and Clients of Tatlow, Gump, Faiella & Wheelan, LLC, Attorneys at Law

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Tips for Handling Insurance Claims From Storm Damage

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Many Missourians have experienced devastating losses as a result of severe weather across our state this year. Thousands of people have and will be filing insurance claims and we want to help make sure those claims are handled properly by explaining a few situations that could happen with your insurance claims. Here are just a few things to take into consideration:

1. Many insurance companies use a property damage estimating software program called Xactimate. Prices in the program are updated on a quarterly basis. When a large storm strikes it is not uncommon for labor and materials prices in the area of the storm to increase, sometimes rapidly. As a result the prices in the Xactimate program may be outdated at the time of the storm because of the sudden increase in prices. Check with your insurer who uses this or similar programs to determine if they have updated their prices to reflect the increase in the prices immediately following the storm. If not, ask that they do so; otherwise your repair estimate may not accurately reflect the exact cost of repairs.
2. Standard homeowner policies provide that you are entitled to the full replacement cost for the repairs to your home. However, the insurer is only required to pay you the actual cash value of your repairs until you replace or repair your property, and then when that is done you can collect the difference between the replacement cost and the actual cash value. This difference is called the hold back. The hold back is determined by subtracting depreciation from the replacement cost estimate for your repairs. Therefore, if your repairs are estimated at \$10,000 for replacement cost value, and the insurer determines that \$1,000 depreciation should be subtracted from the replacement cost repair estimate, the insurer will then pay you initially only \$9,000 (less your deductible). The \$9,000 payment is called the actual cash value payment. Depreciation is determined by considering several factors, such as the wear and tear, age and obsolescence of the item being repaired or replaced. Insurers use a variety of schedules to determine what should be depreciated and for how much. Ask your insurance adjuster how they arrived at the depreciation rate for each item depreciated and what the depreciation rate is based upon to make sure that the appropriate depreciation rate is being applied. Make sure the adjuster is aware of the age of items to be repaired or replaced so that the proper depreciation rate can be applied. For

example, the expected age of interior paint may be ten years. If you painted the inside of your house only two years ago, then the depreciation rate that should be applied to the paint job should only be 20%. If the insurer charges a higher rate you should question their depreciation reduction. Also, several items should not be subject to depreciation, such as pure labor items (i.e., remove and replace light fixture to paint room, etc.) or other items (i.e., profit, overhead, and sales tax, etc.) because these items are not subject to wear, tear and obsolescence. Read the insurer's estimate carefully to make sure that such items are not being depreciated.

3. For large losses (anything over \$10,000) always get your own estimate from a local licensed general contractor who will commit to doing the work for the amount of his estimate. It is preferable that your contractor prepare an estimate on the same kind of estimating program that the insurer uses so that the two estimates can be easily compared. If there are differences between the insurer's estimate and your contractor's estimate have your contractor meet with the insurer's representative at the house to discuss the differences and have the insurer's representative explain why there are differences. Regardless, once the insurer determines what the repairs are, the insurer must pay you that amount, even though there may still be a disagreement between you and the insurer over any additional amounts that can be owed.

4. If there is a dispute between you and the insurer over the amount of the repairs consider taking advantage of the appraisal provision in the policy which is there to resolve disputes over the amount of the loss. In appraisal, you select a qualified appraiser that you pay, the insurer selects their own appraiser, which they pay, and the two appraisers select an umpire, and you and the insurance company share the cost of the umpire. The appraisal panel then determines the amount of the loss which the insurer must pay. Appraisal has some advantages, in that it can be quicker and less expensive than litigation where there is a dispute over the amount of the loss. Nonetheless, you should be careful in selecting your appraiser, and you should consider getting advice from qualified and experienced attorney on your selection as well as to how best proceed with the appraisal.

LEGISLATIVE NEWS: Supreme Court of Missouri Clarifies Reasonable Standard on Section 537.065 Judgments

Recently, the Missouri Supreme Court, in the case *Schmitz v. Great American Assurance Company*, (S.W.3d 2011) held that a trial court was not permitted to determine a reasonableness of an underlying judgment against an insured in an equitable garnishment proceeding when the underlying case was tried to the court.

In *Schmitz*, the insurer argued that the equitable garnishment trial court had to apply the reasonableness test from the *Gulf Insurance* case, 936 S.W.2d at 815.

You can read more on this topic on our [insurance blog](#).

Chris Faiella Selected by Aspatore Books as Author in New Authoritative Book

Chris Faiella, managing member of TGFW has been recognized as a leading plaintiff's attorney in personal injury cases by being selected as an author in the recently released book, *Inside the Minds: Representing Plaintiffs in Personal Injury Cases*, published by Aspatore Books, a Thomson Reuters business.

Inside the Minds: Representing Plaintiffs in Personal Injury Cases (ISBN: 978-0-314-27801-2) provides an authoritative, insider's perspective on key strategies for representing and advising plaintiffs in personal injury disputes. Featuring experienced partners from law firms across the country, these authors guide the reader through the process of bringing a successful complaint, including utilizing experts, considering venue options, and presenting compelling evidence to the jury. These top lawyers offer advice on handling the discovery process, preparing witnesses for trial,

and most importantly, proving negligence. From researching the complaint to managing expenses, these leaders stress the importance of creating open lines of communication with clients. This book also discusses the role of alternative dispute resolution in personal injury cases. The different niches represented and the breadth of perspectives presented enable readers to get inside some of the great legal minds of today, as these experienced lawyers offer up their thoughts around the keys to success within this ever-evolving field.

The *Inside the Minds* series provides readers with an unprecedented introspective look into the leading minds of the business and legal world. For complete information on Aspatore titles, please visit www.west.thomson.com/aspatore. This book can be purchased immediately by calling 1-866-ASPATORE or by visiting their website.



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TGFW Associate Chosen for Leadership Academy



TGFW would like to congratulate associate Cassie Carpenter for being selected to participate in the Missouri Bar Leadership Academy for the 2011-2012 year. The Leadership Academy is made up of 12 young or recently admitted members of the Missouri Bar. The academy seeks young lawyers who already exhibit outstanding leadership in their communities and a commitment to the legal community and profession. Academy participants are nominated by attorneys, firms, coworkers or local attorney organizations. Out of nominees from all over the state, no more than 12 participants are chosen for the program.

Members of each year's Leadership Academy class participate in the Missouri Bar Annual Meeting, Board of Governors meetings, committee meetings, and workshops specifically designed for the Leadership Academy. For one year, the members work closely with bar leaders to learn more about the Missouri Bar, cultivate leadership skills, and develop a public service project. At the end of the year, each member commits to two additional years of active service in the Missouri Bar.

TGFW Firm Anniversaries

2011 marks the 35th year that Rex Gump has been a part of TGFW. Rex grew up in the small town of Blackwater, Missouri. He graduated from Boonville High School in 1965. He then attended MU and obtained a bachelor's degree in engineering. Rex worked as an engineer for AP Green in Mexico, Missouri for a short time before deciding to go to law school. Following graduation from the University of Missouri School of Law, Rex began working for Gary Tatlow as a law clerk while waiting to take the bar exam and obtain his results. After he successfully passed the bar, Rex was hired as an associate with the firm in 1976 and later he became a partner.

Since Rex began his practice, the firm's focus has shifted from general practice to personal injury and insurance law. In the past 20 years, the personal injury practice has increased greatly. In 2001, the Moberly Monitor Index quoted Rex as saying, "We, of course, cannot restore the injured person to health, but it is very gratifying to obtain for an injured person enough compensation or money to make a very real difference in the rest of that person's life." Rex stands by that statement today and continues to strive to help injured people resolve their claims.



Everyone at TGFW would like to thank Rex Gump for his dedication and congratulate him on a successful 35 years. We all hope there are many more triumphs down the road.