IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

WILLIAM C. HENRICH, JR., Plaintiff, v. AUTO-OWNERS INSURANCE COMPANY, Defendant.	)	Case No. 4:15-CV-00475-SMR-SBJ ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Plaintiff William Henrich, Jr., insured his property through Defendant Auto-Owners Insurance Company ("Insurance Company"). A fire subsequently destroyed his property, and the Insurance Company refused to cover the loss because of a residence restriction in the insurance contract. William[1] sued the Insurance Company alleging breach of contract and bad faith. The parties filed cross motions for summary judgment. As set forth below, William's Motion for Summary Judgment, [ECF No. 21], is GRANTED in part and the Insurance Company's Motion for Summary Judgment, [ECF No. 25], is GRANTED in part.

I. BACKGROUND

In 1975, William and his wife purchased a house located at 536 Fourth Street, Nevada, Iowa ("Nevada residence"). [ECF Nos. 21-3 at 3, 7; 26 at 2]. They then had a son, Matthew, and raised him there. [ECF No. 26 at 2]. In 2006, Matthew moved back into the Nevada residence with his girlfriend, and William and his wife subsequently moved out to Ankeny, Iowa, leaving

[1] Since multiple members of Plaintiff's family have the same last name, and their roles are relevant to the case, the Court refers to Plaintiff and members of Plaintiff's family by their first names, if known, to avoid confusion.

for Matthew the Nevada residence and its contents. [ECF Nos. 21-3 at 3–4; 26 at 2]. William continued to own the Nevada residence, while Matthew owned its contents, and William occasionally stayed overnight there, especially in times of bad weather, because his job remained in Nevada, Iowa.[2] [ECF Nos. 21-3 at 3; 25-3 at 59; 26 at 3].

William insured both the Nevada residence and the new Ankeny residence through the Insurance Company. [ECF Nos. 21-3 at 4, 7–8; 26 at 4–5]. The terms for the two separate insurance policies overlapped. The insurance policy for the Nevada residence had a one-year term beginning on July 19, 2014. [ECF No. 26 at 4]. The insurance policy for the new Ankeny residence had a one-year term beginning on October 12, 2014. *Id.* at 5. William timely paid all the required premiums on both policies. [ECF Nos. 21-3 at 4, 8; 26 at 4–5].

On December 18, 2014, Matthew argued with his girlfriend. [ECF No. 26 at 5–6]. After she went to work, Matthew set the Nevada house and garage on fire, killing his girlfriend's dog, and then drove his truck through the front door of his girlfriend's workplace. *Id.* He pled guilty to Arson in the Third Degree, Criminal Mischief in the First Degree, Animal Neglect, and five counts of Assault with a Dangerous Weapon. *Id.* He is currently serving his prison sentence. *Id.*

The fire completely destroyed the Nevada residence. [ECF No. 21-3 at 5, 60]. The policy insuring the Nevada residence provided coverage for loss due to fire. [ECF No. 21-3 at 26, 32].

[2] William originally testified in a deposition that, with respect to the contents of the Nevada residence, he "[g]ave it to" Matthew "[s]o it becomes his." [ECF No. 25-3 at 59]. He subsequently alleged he retained ownership of the contents because he merely left the contents "for Matthew's use." [ECF No. 21-2 at 2]. However, the affidavit William cites in support of this latter allegation—an affidavit William provided after his deposition—fails to support William leaving the contents of the house merely for Matthew's use. [ECF No. 21-3 at 3–4]. Thus, the evidence indisputably indicates that William retained ownership of the Nevada residence but gave to Matthew the house's contents. Still, the parties agreed during oral arguments that the ownership of each individual item within the house and of the contents generally is not at issue. Therefore, this ruling does not apply to the contents of the Nevada residence.

William made a timely claim for coverage. [ECF Nos. 21-3 at 60–62; 26 at 7]. He alleges a loss "in excess" of $178,950 and loss of personal property. [ECF No. 1-2 at 1]. At the time of the fire, the remaining mortgage on the house was $53,714.92. [ECF No. 21-3 at 5].

The insurance policy covering the Nevada residence contained a "residence restriction" that limited coverage to only buildings and structures used as a residence by William.

> **We** Cover:
>
> **(a) your** dwelling located at the **residence premises** including structures attached to that dwelling. This dwelling must be used principally as **your** private residence.
>
> **(b)** construction material and supplies at or next to **your residence premises** for use in connection with **your** dwelling or other structures insured under Coverage B – Other Structures.

[ECF No. 21-3 at 23 (emphasis in original)]. The policy provided definitions for all the words in "bold face type." [ECF No. 21-3 at 21].

> 15. **Residence premises** means:
>
> **a.** the one or two family dwelling where **you** reside, including the building, the grounds and other structures on the grounds; or
>
> **b.** that part of any other building where **you** reside, including grounds and structures;
>
> which is described in the Declarations.
>
> 17. **You** or **your** means the first named insured shown in the Declarations and if an individual, **your** spouse who resides in the same household.

[ECF No. 21-3 at 22 (emphasis in original)].

The Insurance Company paid the remainder of the mortgage ($53,714.92) but refused to pay for the loss of the Nevada residence. [ECF No. 21-3 at 6, 64]. It sent William a letter on May 21, 2015, that stated in part:

> Under [the policy's] language, coverage could be available only if the Nevada house was the dwelling at which "you"—the "named insured" under the policy—"reside[d]," and "used principally" as your "residence," at the time of the

> fire. Based on your examination under oath testimony, that was not the case. At the time of the fire, your son (Matthew) was living alone in the Nevada house. No one else had lived at the Nevada house since 2011. At the time of the fire, your residences were: (1.) an Ankeny condominium; and (2.) a house in Windsor Heights.
>
> Because the Nevada house was not where you "reside[d]," and was not "used principally" as your "residence," the policy does not afford coverage for the December 18, 2014 fire. Accordingly, your claim is formally denied.

[ECF No. 21-3 at 64]. Through counsel, William made another demand for payment. [ECF No. 21-3 at 6]. The Insurance Company denied the demand again. *Id.*

William then brought suit against the Insurance Company in state court alleging (1) breach of the fire insurance policy and (2) bad faith. [ECF No. 1-2 at 1–2]. The Insurance Company removed the case to this Court. [ECF No. 1]. William filed a Motion for Summary Judgment, [ECF No. 21], and the Insurance Company filed a Cross Motion for Summary Judgment, [ECF No. 25].

II. SUMMARY JUDGMENT STANDARD

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Paulino v. Chartis Claims, Inc.*, 774 F.3d 1161, 1163 (8th Cir. 2014). "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." *Amini v. City of Minneapolis*, 643 F.3d 1068, 1074 (8th Cir. 2011) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 252 (1986)). Courts must view "'the facts in the light most favorable to the nonmoving party and giv[e] that party the benefit of all reasonable inferences that can be drawn from the record.'" *Pedersen v. Bio-Med. Applications of Minn.*, 775 F.3d 1049, 1053 (8th Cir. 2015) (quoting *Johnson v. Wells Fargo Bank, N.A.*, 744 F.3d 539, 541 (8th Cir. 2014)).

III. ANALYSIS

Two claims exist in this case: (1) breach of the insurance contract and (2) bad faith. [ECF No. 1-2 at 1–2]. Both claims are subject to summary judgment.[3] [ECF Nos. 21 at 2, 25 at 2–3]. As explained below, with respect to the breach of contract claim, the residence restriction violates Iowa Code sections 515.109 and 515.101, and therefore the Insurance Company must cover the loss to the Nevada residence. The bad faith claim fails as a matter of law.

A. The Breach of Contract Claim

The Insurance Company argues that the breach of contract claim fails as a matter of law because the contract expressly allowed the Insurance Company to deny William insurance coverage. Specifically, it asserts that William did not reside at the Nevada residence, as required by the contract's residence restriction. [ECF No. 25-1 at 5].

William does not dispute the Insurance Company's reading of the unambiguous terms of the contract, namely, that the residence restriction on its face eliminates coverage.[4] [ECF Nos. 21 at 1; 21-1 at 6–7; 25-1 at 5; 29 at 2; 30 at 4 (William stating that his "problem is not with the interpretation of policy language")]. He instead makes three arguments why the residence restriction cannot be enforced. First, he asserts that the policy's residence restriction at issue "conflicts with the minimum protections afforded by Iowa Code section 515.109 and may not be

[3] William sought summary judgment on both claims but solely limited his brief to the breach of contract claim. [ECF No. 21 at 2]. Subsequently, William characterized his Motion for Summary Judgment as a Partial Motion for Summary Judgment solely on the breach of contract claim. [ECF No. 29 at 2].

[4] The Insurance Company also argues that if William resided at the Nevada residence, the intentional acts provision—a provision in the policy that precludes coverage if a relative living with the insured, here Matthew, causes the loss—precludes coverage. [ECF No. 25-1 at 5]. However, this argument is moot because the parties agree that William did not reside at the Nevada residence. [ECF Nos. 21 at 1; 21-1 at 6–7; 25-1 at 5; 29 at 2; 30 at 4].

enforced." [ECF No. 21 at 1]. Second, a "[f]ailure to reside in the property did not contribute to the loss and therefore does not bar recovery" under an insurance policy as guaranteed by Iowa Code section 515.101. [ECF Nos. 21 at 1; 21-1 at 6–7]. Finally, "[p]recluding recovery under the terms of the fire insurance policy would violate the doctrine of reasonable expectations." [ECF No. 21 at 2].

As set forth below, the residence restriction violates Iowa Code sections 515.109 and 515.101. Since sections 515.109 and 515.101 resolve the coverage issue, the Court does not address William's tertiary argument based on the doctrine of reasonable expectations.

1. Iowa Code Section 515.109

The Iowa Supreme Court has provided that "when a policy provision conflicts with a statutory requirement, the policy provision is ineffective and the statute controls." *Lee v. Grinnell Mut. Reins. Co.*, 646 N.W.2d 403, 406 (Iowa 2002). It explained that

> [a] statute that authorizes a contract of insurance has application beyond merely permitting or requiring such a policy. The statute itself forms a basic part of the policy and is treated as if it had actually been written into the policy. The terms of the policy are to be construed in light of the purposes and intent of the applicable statute.

Id. (quoting *Tri-State Ins. Co. of Minn. v. De Gooyer*, 379 N.W.2d 16, 17 (Iowa 1985)).

William asserts that Iowa Code section 515.109(2)(a) is the applicable statute here. [ECF No. 21-1 at 6]. Iowa Code section 515.109(2)(a) states that "[i]t shall be unlawful for any insurance company to issue any policy of fire insurance upon any property in this state . . . *other or different from the standard form of fire insurance policy herein set forth*." Iowa Code § 515.109(2)(a) (emphasis added and inapplicable exceptions omitted). Section 515.109(6) provides the standard fire insurance policy form that "lists various permissible standard provisions for fire policies." *Thomas v. United Fire & Cas. Co.*, 426 N.W.2d 396, 397 (Iowa 1988). This standard form is the

"minimum protection provided" and if the policy at issue "denies the statutory minimum, the insurance policy is unenforceable, and [the court] must reform it to comply with the statute." *Postell v. Am. Family Mut. Ins. Co.*, 823 N.W.2d 35, 48 (Iowa 2012). A policy denies the statutory minimum when a restrictive provision within it is not the "substantial equivalent" of a provision within the standard form and it thereby restricts coverage more so than the standard form. Iowa Code § 515.109(5) (allowing insurers to issue a different policy "if such policy includes provisions with respect to the peril of fire which are the substantial equivalent of the minimum provisions of such standard policy").[5]

The Insurance Company asserts that the residence restriction is the substantial equivalent of two standard form provisions: (1) the vacancy provision and (2) the increased hazard provision. [ECF No. 25-1 at 9, 14]. The vacancy and increased hazard provisions are located in the standard form's section "suspending or restricting insurance." Iowa Code § 515.109(6)(a). That section states, in relevant part:

> *Conditions suspending or restricting insurance.* Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring under any of the following circumstances:
>
> [a] While the hazard is created or increased by any means within the control or knowledge of an insured.
>
> [b] While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days.

Id. No Iowa state court or court within the Eighth Circuit has analyzed whether a residence restriction violates section 515.109(2)(a) or, more specifically, whether it is a "substantial equivalent" to any provision—whether vacancy, increased hazard, or otherwise—within the

[5] Iowa Code section 515.109(5) also requires that the policy be "complete as to all its terms of coverage without reference to any other document," and to comply with subsections 515.102(1) and 515.102(2). The parties do not dispute that the policy satisfies these requirements.

standard fire insurance policy under section 515.109(6). Thus, the Court must turn to other jurisdictions. *See Sager v. Farm Bureau Mut. Ins. Co.*, 680 N.W.2d 8, 13 (Iowa 2004) ("When interpreting our standard fire insurance policy, we look to the decisions of other jurisdictions with a similar policy."), *overruled on other grounds by Postell*, 823 N.W.2d at 49.

In *FBS Mortgage Corp. v. State Farm Fire & Casualty Co. of Bloomington, Illinois*, the named insured under a homeowner's policy became incarcerated, and he executed a notarized document leaving his home to a self-described tenant, Carmen Cabrera, to maintain the home. 833 F. Supp. 688, 689–90 (N.D. Ill. 1993). The house subsequently burned down and the insurance company refused to cover the loss. *Id.* at 690. The federal court in Illinois addressed a residence restriction almost identical to the one at issue here. *Id.* at 692. Similar to the "substantial equivalent" requirement in Iowa, Illinois law required any fire insurance policy to "conform" to the state standard form. *Id.* at 695. The court first explained that "the Standard Policy sets forth the minimum coverage upon which an insured can rely under any fire insurance policy issued in Illinois." *Id.* It then reasoned that the standard form provides only "a limited number of exclusions for restricting coverage" and that the "only exclusion involving occupancy" was the vacancy provision, which precludes coverage "when 'a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days.'" *Id.* (quoting the standard form's vacancy provision). The court then reasoned that the tenant lived on the property fifteen days before the fire, making the vacancy provision in the standard form inapplicable. *Id.* As a result, it refused to apply the residence restriction because it limited coverage more so than the standard policy. *Id.* The court explained:

> State Farm's proposed interpretation of the Homeowner's Policy denies coverage in the absence of continuous, physical inhabitation of the Insured Premises by the Named Insured at the time of loss. Hence, State Farm broadens the Standard Policy's exclusions by requiring physical occupation of the Insured Premises for a

> period of *less* than 60 days before the loss. In doing so, State Farm unlawfully compromises the Standard Policy by diminishing the coverage it provides to achieve uniformity and concurrence of contract.

Id.

A state court in Louisiana reached the same conclusion in *Dixon v. First Premium Insurance Group*, 934 So. 2d 134, 141 (La. Ct. App. 2006). There, the named insureds moved to a second home and allowed a tenant to live on the property insured under the homeowner's policy. *Id.* at 137. The insured property burned down and the insurance company refused to pay for the loss "on the grounds that the home was not [the named insureds'] residence premises at the time of the loss." *Id.* The court addressed a residence restriction almost identical to the one at hand. *See id.* at 139. It noted that, under Louisiana law, the policy must "conform" to the standard form, which, like Iowa's standard form, includes the vacancy and increased hazard provisions. *Id.* at 139–40. As in *FBS Mortgage Corp*., the court did not enforce the residence restriction and instead found the vacancy and increased hazard provisions pertinent. *Id.* It then reasoned that the vacancy provision did not apply because the tenant occupied the property at the time of the loss, and the increased hazard provision did not apply because the insurance company failed to provide evidence of how having a tenant on the property increased the risk of loss. *Id.* at 140–41.

Here, the Court is persuaded by *FBS Mortgage Corp.* and *Dixon*, and therefore concludes that Iowa's standard fire insurance form invalidates the residence restriction in William's insurance policy. As an initial matter, like in the cases cited, Iowa's standard form is the statutory "minimum protection provided" and if the residence restriction at issue "denies the statutory minimum, the insurance policy is unenforceable, and [the court] must reform it to comply with the statute." *Postell*, 823 N.W.2d at 48; *see also FBS Mortg.*

Corp., 833 F. Supp. at 695; *Dixon*, 934 So. 2d at 139–40. Iowa's standard form does not contain any express language regarding residence, let alone a residence restriction. It instead generally provides coverage "to the extent of the actual cash value of the property at the time of loss," limited to the repair or replacement cost. Iowa Code § 515.109(6)(a).

Moreover, the standard form's exclusion provisions—specifically the cited vacancy and increased hazard provisions—also do not limit coverage to the extent that the residence restriction does. The vacancy provision does not apply because Matthew lived at the Nevada residence at the time of the fire. *See Dixon*, 934 So. 2d at 140–41. And even if the vacancy provision applied, there is no substantial equivalence between the vacancy provision in the standard form and the residence restriction in William's insurance policy; the vacancy provision precludes coverage only if the insured property remains vacant for more than sixty days, whereas the residence restriction, like the ones in the cases cited, could preclude coverage even when the property is not vacant or if it is vacant for less than sixty days. *See* Iowa Code § 515.109(6)(a); *FBS Mortg. Corp.*, 833 F. Supp. at 695; *Dixon*, 934 So. 2d at 140; [ECF No. 21-3 at 21, 22].

With respect to the increased hazard provision, similar to *Dixon*, the Insurance Company has not provided sufficient evidence indicating how a close family member occupying the Nevada residence increased hazard or the risk of loss. *See* 934 So. 2d at 141. It instead offered evidence that, in general, having *tenants* live on an insured property alters the risk of loss. [ECF Nos. 25-1 at 14–15 (citing a passage from a treatise and an employee affidavit about risks associated with renting property); 25-3 at 73–74 (providing

the employee affidavit, which states that the Insurance Company provides different policies and premiums for "owner occupied dwellings" and for "rental properties")].[6]

On the other hand, with respect to the increased hazard provision, William provided evidence that having family members occupying an insured home does not increase risk. Eric Viers was an agent for the Insurance Company and has been in the insurance business for thirty years. [ECF No. 29-1 at 3]. In an affidavit, he states that based on his "experience selling homeowner policies, [he] do[es] not believe there is any increased risk of loss when the son or daughter of the owner of the residence is residing in the home and the owner lives in a separate residence." [ECF No. 29-1 at 5]. He adds that the Insurance Company has never provided him with information otherwise, and that he has even "[o]n many occasions in the past" "sold *homeowner insurance* to customers who owned more than one residence and lived in one residence and allowed a family member to live in the other residence." [ECF No. 29-1 at 4 (emphasis added)]. This includes selling the two policies to William on behalf of the Insurance Company, and doing the same sale for another insurance company.[7] [ECF No. 29-1 at 3–4, 6].

[6] The employee affidavit provides only one statement regarding the difference of risk specifically between owner-occupied and owner-unoccupied properties, as opposed to owner-occupied and rented properties. [ECF No. 25-3 at 74]. The employee states, "There is a *different* underwriting risk associated with non-owner occupied properties than there is with owner-occupied properties." *Id.* (emphasis added). However, this statement is insufficient evidence to survive a motion for summary judgment because it is dominated by the owner-tenant distinction evinced throughout the affidavit, and, even if it stood on its own, it is too general and unsupported, and it only indicates the risk is "different" as opposed to "increased," as required by statute.

[7] The Insurance Company argues that Mr. Viers's affidavit is not competent evidence because "he is an insurance agent and *not* an underwriter" and therefore he "is not qualified to proffer underwriting or risk opinions." [ECF No. 31-1 at 6 (emphasis in original)]. But Mr. Viers has thirty years of experience selling insurance policies, which presumably included coverage

Here, then, the undisputed facts indicate that the residence restriction limits coverage more so than the standard policy, including its exclusion provisions, and that it therefore impermissibly "broadens" the standard form's exclusions and provides less coverage than the minimum required by statute. *See FBS Mortg. Corp*, 833 F. Supp. at 695 ("State Farm broadens the Standard Policy's exclusions" and therefore "unlawfully compromises the Standard Policy").

The case the Insurance Company cites in opposition, *Keelen v. Metropolitan Property & Casualty Insurance Co.*, is not persuasive. No. 11–1596, 2012 WL 1933747, at *6 (E.D. La. May 29, 2012). There, the court reasoned that "there is no term in the Standard Policy that relates to residence requirements," and the presence of the vacancy provision in the standard policy indicates the standard policy contemplates limiting "coverage to buildings used for certain purposes." *Id.* This includes, as suggested in the vacancy provision, limiting coverage based on whether the owner or a tenant occupies the building, which is a common difference in the insurance industry between homeowner's insurance policies and rental dwelling insurance policies. *Id.* (citing the vacancy provision). This difference then suggested to the court the ability to also limit coverage based on residency. Thus, the court concluded that precluding this practice for the policy at issue "would create rental dwelling coverage where none exists or was intended in direct contravention to the unambiguous language of the policy." *Id.* The court distinguished *Dixon* as failing to understand this insurance "framework," and then applied the residence restriction in the policy. *Id.*

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based on risks assessed by actual underwriters, and based on this experience, Mr. Viers is qualified to provide statements about risk assessments.

Keelen is not persuasive for two reasons. First, its reasoning does not apply because Matthew was not a tenant, and so eliminating the residence restriction in William's insurance policy would not create rental dwelling coverage or disturb the insurance framework built around the tenant-owner occupancy distinction. Indeed, Mr. Viers sold William the two homeowner's policies, not rental dwelling policies, and he states he "did not consider [the Henrichs' residence status] to be a rental arrangement." [ECF No. 29-1 at 3].

Second, even if Matthew was a tenant, *Keelen* misses the impermissibly broad scope of the residence restriction. Assuming, *arguendo*, that the standard form allows limiting coverage depending on whether the owner or a tenant occupies the building—which *Keelen* and the Insurance Company argue is common in the insurance industry—the residence restriction nonetheless fails to narrowly target the risks involved with tenancy versus owner occupation. It instead targets situations outside of this dichotomy, including the Henrichs' situation, which involved neither tenancy nor owner occupation. If the Insurance Company wished to limit coverage due to risks associated with tenancy, as is common in the industry, it could have expressly done so in the policy by using narrower, tenancy-related language.[8]

[8] The policy provides a limit on coverage based specifically on tenancy. It states that the Insurance Company "do[es] not cover" "any structures used for **business** purposes." [ECF No. 21-3 at 23]. It then defines business as "rental or holding out for rental to others of any premises by any insured." [ECF No. 21-3 at 21]. The existence of this language provides further evidence that the residence restriction targets something other than the risks associated with tenancy. And, again, the record does not indicate that whatever risk the residence restriction does target is an increased risk.

2. Iowa Code Section 515.101

William also asserts that a "[f]ailure to reside in the property did not contribute to the loss and therefore does not bar recovery" under an insurance policy as guaranteed by Iowa Code section 515.101. [ECF Nos. 21 at 1; 21-1 at 6–7]. Iowa Code section 515.101 is "Iowa's antitechnicality statute" that has remained "virtually unchanged since its adoption in 1897."[9] *Schneider Leasing, Inc. v. U.S. Aviation Underwriters, Inc.*, 555 N.W.2d 838, 841 (Iowa 1996). It states:

> Any condition or stipulation in an application, policy, or contract of insurance making the policy void before the loss occurs shall not prevent recovery on the policy by the insured, if the plaintiff shows that the failure to observe such provision or the violation thereof did not contribute to the loss.

Iowa Code § 515.101(1). This statute applies only "to situations in which an insured's breach of a condition voids the policy and forfeits the insured's coverage." *Midwest Office Tech., Inc. v. Am. Alliance Ins. Co.*, 437 N.W.2d 555, 558 (Iowa 1989). Section 515.101(2) provides exemptions, including two most relevant exemptions that mirror the exclusions under the standard

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[9] Section 1743 of the Iowa Code of 1897 stated in relevant part:

> **Conditions.** Any condition or stipulation in an application, policy or contract of insurance, making the policy void before the loss occurs, shall not prevent recovery thereon by the insured, if it shall be shown by the plaintiff that the failure to observe such provision or the violation thereof did not contribute to the loss: *provided*, however, that any condition or stipulation referring to any other insurance, valid or invalid, or to vacancy of the insured premises or the title or ownership of the property insured, or to liens or incumbrances thereon created by voluntary act of the insured and within his control, or to the suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium, or to the assignment or transfer of such policy of insurance before loss without the consent of the insurance company, or to the removal of the property insured, or to a change in the occupancy or use of the property insured, if such removal, change or use makes the risk more hazardous, or to the fraud of the insured in the procurement of the contract of insurance, shall not be changed or affected by this provision.

Iowa Code § 1743 (1897); *see also Hawkeye Chem. Co. v. St. Paul Fire & Marine Ins. Co.*, 510 F.2d 322, 325 (7th Cir. 1975) (quoting Iowa Code § 1743 (1897)).

fire insurance form as explained above: (1) "[v]acancy of the insured premises" and (2) a "change in the occupancy or use of the property insured, if such change or use makes the risk more hazardous." Iowa Code § 515.101(2)(b), (h).

No federal court within the Eighth Circuit has addressed whether a residence restriction violates section 515.101(1). With respect to Iowa state court cases on point, only two exist and were decided by the Iowa Supreme Court in 1904 and 1931. First, in *Danels v. Farm Property Mutual Insurance Ass'n of Des Moines*, a tenant who lived on the insured property left, leaving the property vacant. 239 N.W. 24, 25 (Iowa 1931). The Court addressed whether vacating the property precluded coverage under the increased hazard provision, which precludes coverage when a change in occupancy or use of the building increases the risk of hazard. *Id.* It held that preclusion of coverage was improper because the provision regarding change in occupancy or use of the building did not apply specifically to vacancy. *Id.* As the Court explained, "[t]he words 'vacancy' and 'occupancy' imply the opposite. If a building is occupied it is not vacant; if vacant, it is not occupied." *Id.*; *see also Cone v. Century Fire Ins. Co.*, 117 N.W. 307, 309 (Iowa 1908) ("The appellee further says that under section 1743 of the Code the burden was on the appellant to prove that the change in the occupancy or use of the premises made the risk more hazardous; but by its express terms the section does not apply to provisions making void the policy for vacancy or unoccupancy.").

Second, in *Nicholas v. Iowa Merchants' Mutual Insurance Co.*, the named insured moved out of the insured property, leaving it to a tenant. 101 N.W. 115, 116 (Iowa 1904). The property burned down, and the insurance company refused to cover the loss because "the change of occupancy rendered the policy void." *Id.* at 117. The Court considered the application of Iowa Code section 1743, which was at the time the "virtually unchanged" antitechnicality law now under

section 515.101. *Id.*; *Schneider Leasing, Inc.*, 555 N.W.2d at 841 (indicating section 515.101 is derived from section 1743, which was enacted in 1897 and remained "virtually unchanged" since). The Court noted that, just as section 515.101 states today, section 1743 instructed that "unless the change in occupancy or use of the property insured made the risk more hazardous, the condition against such change or use is of no effect." *Nicholas*, 101 N.W. at 117. It then briskly affirmed the finding that sufficient evidence indicated the occupancy change did not increase the risk, and the Court made clear that it even doubted that the insured's moving out in exchange for a tenant was, as a matter of law, "a change in the use or occupancy of the building" as contemplated by the statute. *Id.* The Court only assumed it was because the case was tried below "on the theory that the change was within the terms of the policy." *Id.*

Here, the residence restriction violates section 515.101(1). As an initial matter, the Insurance Company does not argue otherwise in its briefing.[10] [ECF Nos. 25-1 at 4–24; 33-1 (failing to mention section 515.101 altogether)]. Moreover, no evidence indicates that William's failure to reside at the Nevada residence contributed to the loss. Matthew independently committed arson. [ECF No. 25-1 at 3 (the Insurance Company admitting that "Mr. Henrich's son, Matthew Henrich, set fire to the Nevada house. Mr. Henrich was not involved in the fire and Matthew Henrich was criminally charged for his acts.")]. Additionally, no section 515.101(2)

[10] The Insurance Company resisted William's list of undisputed facts, but it failed to submit a resisting brief opposing William's arguments in his Motion for Summary Judgment. [ECF No. 26 (response to William's summary judgment motion containing only a resistance to William's list of undisputed facts)]. The Insurance Company instead submitted its own Motion for Summary Judgment with a brief in support and a reply to William's resistance. [ECF Nos. 25; 25-1; 33-1]. But those documents also fail to address William's section 515.101 argument. [ECF No. 25-1 at 4–24 (failing to mention section 515.101 altogether)]. Essentially, William's section 515.101 argument remains unresisted in the briefing documents. During oral argument, the Insurance Company noted that any argument with respect to vacancy and increased risk under section 515.109 also applies here under section 515.101.

exemptions apply. Matthew occupied the Nevada residence, which, as *Danels* instructs, makes the vacancy exemption inapplicable. *See Danels*, 239 N.W. at 25 (indicating that if the property is occupied, it cannot be vacant). And, as already explained earlier in this ruling, the Insurance Company has not provided sufficient evidence of increased risk of loss, while William provided evidence that having a close family member live on the insured property does not increase the risk. *See Nicholas*, 101 N.W. at 117 (indicating sufficient evidence against increased hazard is enough to avoid the increased hazard exemption). Therefore, refusing to cover the loss was unwarranted.

In sum, the residence restriction violates Iowa Code sections 515.109 and 515.101. The residence restriction must therefore be discarded, and the Insurance Company must cover the loss of the Nevada residence.

B. The Bad Faith Claim

"Iowa law recognizes a common-law cause of action against an insurer for bad-faith denial or delay of insurance benefits." *Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 483 (Iowa 2007). To prevail, "a plaintiff (the insured) must prove (1) that the insurer had no reasonable basis for denying benefits under the policy [and] (2) the insurer knew, or had reason to know, that its denial was without basis." *Id.* at 483 (internal quotation marks omitted). "The first element is an objective one; the second element is subjective." *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005).

> A reasonable basis for denying insurance benefits exists if the claim is "fairly debatable" as to either a matter of fact or law. *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 396 (Iowa 2001); *see also Covia v. Robinson*, 507 N.W.2d 411, 416 (Iowa 1993). "A claim is 'fairly debatable' when it is open to dispute on any logical basis." *Bellville*, 702 N.W.2d at 473. Whether a claim is "fairly debatable" can generally be determined by the court as a matter of law. *Id.* (quoting *Gardner v. Hartford Ins. Accident & Indem. Co.*, 659 N.W.2d 198, 206 (Iowa 2003)) ("That is because '[w]here an objectively reasonable basis for denial of a claim *actually exists*, the insurer cannot be held liable for bad faith as a matter of law.' "). If the court determines that the defendant had no reasonable basis upon which to deny the

> employee's benefits, it must then determine if the defendant knew, or should have known, that the basis for denying the employee's claim was unreasonable.

Rodda, 734 N.W.2d at 483.

Here, the coverage issue is fairly debatable, and therefore an objectively reasonable basis for denying insurance benefits existed, extinguishing the bad faith claim. Specifically, the parties do not dispute that the residence restriction on its face eliminates coverage. [ECF No. 30 at 4 (indicating that "Mr. Henrich's problem is not with the interpretation of policy language but rather with the fact that the policy does not comport with [sections 515.109 and 515.101]")]. Whether denying coverage through the residence restriction was proper, then, rested on sections 515.109 and 515.101. *Id.* And the sections' power to invalidate the residence restriction was not at all clear. Indeed, with respect to the section 515.109 analysis, no decision by an Iowa state court or federal court within the Eighth Circuit was on point, and the three cases this Court found were not in agreement. With respect to the section 515.101 analysis, no federal court decision within the Eighth Circuit was on point, and the state court decisions most on point were from the early 1900s. In addition to this legal uncertainty, the analysis under both sections, as explained above, favored William because the Insurance Company failed to provide evidence that having a close family member living in the Nevada residence increased the risk of loss. Had the Insurance Company provided sufficient, competent evidence of an increased risk of loss, the analysis might have favored the Insurance Company by implicating the increased hazard provisions under sections 515.109(6) and 515.101(2).

Moreover, William's argument is unpersuasive.[11] He argues that the Insurance Company

[11] William does not make any arguments regarding his bad faith claim in briefing his own Motion for Summary Judgment. He mentions the bad faith claim only in his resistance to the Insurance Company's motion.

> sold [him] a home-owners policy which was worthless the moment it was issued. According to the positions [the Insurance Company] has taken in this matter, the policy would *never* cover any casualty loss on the Nevada property because Mr. Henrich didn't live in the property – a fact [the Insurance Company] and their agent [Mr. Viers] knew at the time they sold the homeowners policy to Mr. Henrich.

[ECF No. 30 at 5 (emphasis added)].[12] Implicit within his argument is the assumption that the residence restriction does not allow William to reside on more than one property, namely, that living at the Ankeny residence automatically precluded coverage of the Nevada residence. *Id.* In support, he submitted only one case related to this argument.[13] *Morin v. Tracy, Driscoll & Co., Inc.*, No. CV030823241S, 2004 WL 1395945 (Conn. Super. Ct. May 26, 2004) (unpublished). In *Morin*, an unpublished opinion, the Superior Court of Connecticut found that an insurance broker who knowingly omitted material information on an insured's insurance application, such that it rendered the resulting insurance policy voidable and therefore worthless due to the omission, could be liable for bad faith. 2004 WL 1395945, at *3.

[12] William also relies on estoppel to support his bad faith claim, stating he has shown "he relied on the representation of [the Insurance Company] that he had coverage on the Nevada residence where his son lived despite the fact [William] was not living in the house." [ECF No. 30 at 5]. He cites two relevant cases. *Hully v. Aluminum Co. of Am.*, 143 F. Supp. 508 (S.D. Iowa 1956); *Westfield Ins. Cos. v. Econ. Fire & Cas. Co.*, 623 N.W.2d 871 (Iowa 2001). These cases do not apply estoppel to a bad faith claim but instead use it to determine whether denial of coverage through an exclusion was proper. *Hully*, 143 F. Supp. at 512; *Econ. Fire & Cas. Co.*, 623 N.W.2d at 880. Indeed, it is unclear to this Court how estoppel could be used to show bad faith. To the extent William seeks to use estoppel to invalidate the residence restriction, his argument is moot because the Court has already invalidated the restriction earlier in this ruling by relying on Iowa statutes.

[13] William also cited two other cases unrelated to this argument. *Nassen v. Nat'l States Ins. Co.*, 494 N.W.2d 231 (Iowa 1992); *Rodman v. State Farm. Mut. Ins. Co.*, 208 N.W.2d 903 (Iowa 1973). Neither case is relevant. *Rodman* did not involve bad faith at all and William's citation to it leads to a reasonable expectation analysis. 208 N.W.2d at 905–06. *Nassen* addressed whether relying on an unconfirmed diagnosis in the insured's medical record, which the insured did not disclose, to deny her coverage under the nursing home insurance policy was proper and "fairly debatable" under the bad faith analysis. 494 N.W.2d at 236. Its facts are not readily analogous to this case.

However, the record does not support William's argument. The residence restriction on its face requires only that William uses the insured premises "principally" as a residence, as opposed to a business property or for another non-residential purpose. [ECF No. 21-3 at 23]. It does not require that it be William's only residence. Consistent with the restriction's language, the Insurance Company's denial letter indicates William could have resided in more than one place because it acknowledges that William resided on two separate properties at the time of the fire. [ECF No. 21-3 at 64]. Thus, as the parties agreed during oral arguments, William could have established residential use at both the Nevada and Ankeny residences and enjoyed coverage for both. *See also McFarland v. McFarland*, No. C08-4047-MWB, 2009 WL 692298, at *5 (N.D. Iowa Mar. 16, 2009) ("[A] person may have more than one residence . . . ."); *In re Jones' Estate*, 182 N.W. 227, 228 (Iowa 1921) ("A person may have more than one residence at the same time[.]"). Indeed, had William's policy been patently worthless as he claims the Insurance Company knew, it would be difficult to explain why the Insurance Company went through extensive procedures to determine coverage after the Nevada residence burned down. [ECF No. 21-3 at 64 (indicating the Insurance Company took William's deposition and analyzed whether the policy at issue provided coverage)].

Finally, since William's bad faith tort claim fails, he cannot obtain any punitive damages. *See Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 347 (Iowa 1999) ("We will only uphold an award of punitive damages for breach of contract when the breach . . . constitutes an intentional tort . . . ."). The case law William cites also indicates that a presence of a tort claim is necessary. *See Dolan v. Aid Ins. Co.*, 431 N.W.2d 790, 794 (Iowa 1988) (recognizing that a breach of contract claim alone "will not always adequately compensate an insured for an insurer's bad faith conduct" and therefore recognizing a first-party bad faith tort claim to provide the insured

punitive damages under the standards applied in *Pirkl v. Nw. Mut. Ins. Ass'n*, 348 N.W.2d 633, 636 (Iowa 1984)). Therefore, William's request for punitive damages must be stricken.

IV. CONCLUSION

For the foregoing reasons, William's Motion for Summary Judgment, [ECF No. 21], is GRANTED in part and the Insurance Company's Cross Motion for Summary Judgment, [ECF No. 25], is GRANTED in part. The bad faith claim is DISMISSED, the request for punitive damages is STRICKEN, and the Insurance Company must cover the loss to the Nevada residence. The case shall proceed to trial to determine damages.

IT IS SO ORDERED.

Dated this 24th day of March, 2017.

Stephanie M. Rose

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STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT