

8th Circ. Backs State Farm In COVID 'Overpaid' Premium Suit

By **Shane Dilworth**

Law360 (February 3, 2022, 6:02 PM EST) -- The Eighth Circuit on Thursday cemented State Farm's win in a Missouri flower shop's proposed class action alleging the insurer failed to lower premiums for businesses that closed during the early stages of the pandemic, finding that the policyholder was required to lodge its complaint with the state's insurance director.

The three-judge panel said in Thursday's ruling that it agreed with U.S. District Judge Brian Wimes that the allegations in Alissa's Flowers Inc.'s suit boil down to the rate charged by State Farm Fire & Casualty Co. for coverage. Disputes over the rates an insurer charges are overseen by the Missouri Department of Insurance, the panel said.

"Alissa's Flowers argues that it overpaid its premium, but it does not contend that its amount of coverage should change," U.S. Circuit Judge Roger L. Wollman wrote for the panel. "Alissa's Flowers' grievance thus appears to be with the equation's other variable: the rate."

Laura A. Foggan of Crowell & Moring LLP applauded the Eighth Circuit's ruling. Foggan, who filed an amicus curiae brief on behalf of insurance trade groups supporting State Farm, told Law360 she agreed that the dismissal of the Independence, Missouri-based florist's suit was consistent with Missouri law as well as the state's requirement to exhaust administrative remedies.

"Alissa's Flowers' claims seem to overlook some of the most basic precepts of the insurance system, which the Missouri Insurance Department is equipped to address," said Foggan, who represents the American Property Casualty Insurance Association and the National Association of Mutual Insurance Companies.

The Show-Me State's laws require insurers to file rates with the director of the Department of Insurance and allow individuals to seek review of the rates and underwriting rules used by a carrier. According to court records, the aggrieved individual must first inform the insurer of the complaint before it can be reviewed by the director.

Foggan pointed out that the collection of premiums is how insurers stay in business.

"An insurer will sometimes pay more in claims than it receives in premiums from a particular policyholder, but there are also instances where premiums paid exceed the amount paid in claims," Foggan explained. "In either situation, earned premiums are retained by the insurer. Otherwise, the industry could not survive."

Alissa's Flowers obtained a commercial general liability, or CGL, policy from State Farm in March 2020, just weeks before government shutdown orders forced nonessential businesses to close in order to stop the spread of COVID-19. The florist closed from March 16, 2020, until May 11, 2020, and suffered a loss in income of roughly \$100,000.

The dispute between Alissa's Flowers and State Farm started in May 2020 when the policyholder filed a breach of contract action, complaining it overpaid premiums to the insurer despite a "significantly lower exposure rate due to COVID-19."

The florist sought to lead a proposed class for all persons and entities that purchased a CGL policy from State Farm that was in effect for six months or longer, paid the premiums and were subject to the stay-at-home orders.

State Farm asked Judge Wimes to cut the suit, contending that Missouri law requires Alissa's Flowers to lodge its complaint with the director of the state's Department of Insurance. The judge **granted** the motion in October 2020, saying the court had no business addressing the policyholder's allegations because they focused on State Farm's rates.

Alissa's Flowers sought review from the Eighth Circuit, but the panel was unpersuaded by the florist's arguments to reverse the ruling.

A spokesperson for State Farm said the company believes the Eighth Circuit ruled correctly when affirming dismissal of the suit.

The Missouri Department of Insurance declined to comment on the ruling.

Counsel for the parties did not respond Thursday to requests for comment.

U.S. Circuit Judges Bobby E. Shepherd, Roger L. Wollman and Jonathan A. Kobes were on the panel.

Alissa's Flowers is represented by Matthew L. Dameron of Williams Dirks Dameron LLC and by Matthew V. Bartle of Bartle & Marcus LLC.

State Farm is represented by James F. Bennett, Elizabeth C. Carver and Michael J. Kuhn of Dowd Bennett LLP.

The American Property Casualty Insurance Association and the National Association of Mutual Insurance Companies, amici curiae for State Farm, are represented by Laura A. Foggan of Crowell & Moring LLP.

The case is Alissa's Flowers Inc. v. State Farm Fire & Casualty Co., case number 20-3340, in the U.S. Court of Appeals for the Eighth Circuit.

--Additional reporting by Daphne Zhang. Editing by Nick Petruncio.