

Missouri Court Dismisses Complaint Alleging Overcharge Of Premiums During Covid

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A Missouri federal district court dismissed a policyholder's suit against State Farm, alleging that the insurer overcharged premiums due to changes in business activity during the Covid pandemic. *Alissa's Flowers, Inc. v. State Farm Fire & Cas. Co.*, 2020 WL 6555048 (W.D. Mo. Oct. 22, 2020).

The policyholder's suit, which includes claims for breach of contract, breach of good faith and fair dealing, unjust enrichment and declaratory and injunctive relief, alleges that State Farm had an obligation to adjust insurance premiums in response to reduced business operations during the Covid pandemic. The complaint asserts that three provisions in the policy obligate State Farm to reduce premiums based on mandatory Covid-related business closures: (1) a provision that reserves State Farm's right to raise premiums; (2) a provision requiring State Farm to perform an audit during the policy period and return unearned premiums; and (3) a provision requiring State Farm to return any premium credit owed to policyholders.

State Farm argued that the complaint challenges its insurance rates and rating system, and must therefore be brought before the Missouri Department of Insurance ("MDI") in order to exhaust administrative remedies before filing in a court of law. The court agreed. First, the court rejected the policyholder's assertion that its claims challenge State Farm's premiums, not its rates, reasoning that allegations of premium overpayment are "in essence" a "challenge to State Farm's rates, rating plan, rating system and underwriting rules." Second, the court concluded that the policyholder was obligated to exhaust administrative remedies prior to suing in court. Missouri statutory law provides the MDI with the authority to review insurance rates of insurers doing business within the state and allows claimants to file a written complaint and request a hearing to challenge an insurer's rates. *See* Mo. Rev. Stat. §§ 379.321, 379.348. The court ruled that these administrative remedies must be exhausted prior to judicial action.

In so ruling, the court rejected the policyholder's contention that administrative remedies were "permissive" rather than mandatory. The court acknowledged that the statutory language indicates that "an insured *may* choose whether to avail itself of the complaint procedures set forth" therein. However, the court concluded that administrative exhaustion was required. The court therefore dismissed the complaint for lack of subject matter jurisdiction.

The policyholder has appealed this decision and similar suits alleging premium overcharge during the pandemic have been filed in other jurisdictions. We will keep you apprised of developments in this emerging area.

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