

NATIONAL ASSOCIATION OF
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Olivea Myers

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Abstracts of Significant Cases Bearing on the Regulation of Insurance

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Olivea Myers¹

United States Court of Appeals

Missouri

Alissa's Flowers, Inc. v. State Farm Fire and Cas Co.,
24 F. 4th 1212 (8th Cir. Feb. 3, 2022)

documents ha[d] been filed . . . and the producers ha[d] been properly licensed.” *Id.* at *1. Delsure provided financial statements to the Department and failed to meet various capital and surplus requirements. The Department provided a deadline for Delsure to comply with the requirements. Delsure failed to meet state requirements and the Department revoked Delsure’s certificate of authority. Delsure requested a hearing. The Hearing Officer issued a proposed order and recommended that the Department revoke Delsure’s certificate of authority and the recommendation was accepted by the Commissioner. Delsure filed this appeal arguing that the Commissioner erred when it issued its Final Order and because it was not authorized to sell insurance, that the Department miscalculated how much capital and surplus it had to maintain. Delsure further argued that it never failed to meet the state requirements for capital and surplus. The Department argued that it “possessed the requisite statutory authority to revoke Delsure’s [c]ertificate.” *Id.* at *3. The Department further argued that “Delsure was authorized to and did transact insurance business in Delaware.” *Id.* The Superior Court of Delaware affirmed the Department’s Final Order holding that Delsure “engaged in ‘solicitation or inducement’ defined under [Delaware law] and was transacting insurance in Delaware.” Therefore, it was required to meet the minimum capital and surplus requirements required by Delaware law, and the Department possessed the legal authority to revoke its certificate of authority. *Id.* at *5.

Idaho

Pena v. Viking Ins. Co. of Wisconsin, 169 Idaho 730 (Idaho Feb. 1, 2022)

The Idaho Supreme Court reversed a district court’s ruling granting a motion for summary judgment in favor of Viking Insurance Company. The court held that Viking sold Pena an insurance policy that included “illusory” underinsured motorist coverage. The court deemed the underinsured motorist coverage illusory because the policy had

contending that Directive 218 improperly requires Appellants to expand language in their homeowner's insurance contracts to extend Prohibited Use benefits to insureds who resided in parishes or municipalities that were not subject to an evacuation order issued by local authorities. The Administrative Law Judge found that none of the authorities cited in Directive 218 or elsewhere empowered the Commissioner with the ability to unilaterally expand the jurisdictional purview of civil authorities for the purpose of creating insurance coverage that would not otherwise exist; and that the Commissioner's interpretation of the Prohibited Use poli

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Appellant for unethical conduct. *Id.* at *2. After his disbarment, Appellant took the New Jersey insurance producer license examination and applied for a producer license, disclosing his disciplinary history and his efforts at rehabilitation. The Department of Banking and Insurance ("Department") denied Appellant's application stating that the conduct described including the multiple violations of the rules of professional conduct "coupled with 'the removal of [his] name for the New Jersey roll of attorneys combine to result in [their] decision to issue [the] denial.'" *Id.* Appellant appealed and the case was sent to the Office of Administrative Law. Appellant argued that the Department failed to explain its denial in sufficient detail, that the Department should have evaluated his current fitness under the Rehabilitated Convicted Offenders Act under N.J.A.C. 11:17E-1.4, and that the Department denied Appellant due process and equal protection under the United States and New Jersey constitutions. *Id.* The Administrative Law Judge ("ALJ") denied all of Appellant's arguments. The Commissioner of Insurance adopted the Administrative Law Judge's findings. Appellant appealed to the Supreme Court of New Jersey, and the court affirmed the ALJ and the Commissioner's findings holding that the Department properly denied Appellant's producer license pursuant to the New Jersey Insurance Producer Licensing Act of 2001, which provides that it must deny a license to "anyone who has committed 'a fraudulent act.'" *Id.* at *1. The court further held that the Rehabilitated Convict Offender Act does not apply because a

"Owners did not thoroughly review EMOI's claim that the software was damaged before it denied the claim and held that there were genuine issues of material fact whether owners complied with its duty of good faith in denying EMOI's claim." *Id.* Owners appealed to the Supreme Court of Ohio. The court reversed the appellate court's decision regarding breach of contract and the bad-faith denial of insurance coverage, holding that computer software cannot experience "'direct physical loss or physical damage' because it does not have a physical existence." *Id.* at *4. The court further held that "because the insurance policy at issue did not cover the type of loss EMOI experienced, Owners did not breach its contract with EMOI." *Id.*

South Dakota

Dieter v. XL Specialty Ins. Co., 980 N.W.2d 229 (S.D. Aug. 24, 2022)

The South Dakota Director of Insurance ("Director") filed an order of liquidation of ReliaMax Surety Company on June 12, 2018. ReliaMax obtained two insurance policies for directors and officers liability coverage. The primary policy was with Pioneer Special Risk Insurance Services ("Pioneer") and the excess policy was issued by XL Specialty Insurance Company ("XL Specialty"). The initial policy period for both policies was from July 1, 2017 through July 1, 2018. The Pioneer policy was extended through July 1, 2021. On November 1, 2018, four months after the XL Specialty policy period ended the Director sent Pioneer and XL Specialty notice of a claim. Pioneer did not contest the timeliness of the claim, but XL Specialty denied the claim because "it [did] not appear that this matter constitutes a Claim first made in the [p]olicy [p]eriod." *Id.* at 231. The Director responded stating that pursuant to South Dakota Codified Laws § 58-29B-56 the Director has an additional 180 days from the order of liquidation to give notice of a claim. XL Specialty disagreed, arguing that the statute does not apply because the claim was not made during the policy period. The Supreme Court of South Dakota held in favor of the Director stating that "the provisions of SDCL § 58-29B-56 apply to allow an extension of time to provide notice under a policy fixing period of limitation." *Id.* at 236. The court further held that the intent of the statute was to extend the deadline to "allow the liquidator to mitigate the adverse consequences of an insurer's insolvency by permitting additional time to assert or pursue claims that would otherwise be time-barred." *Id.*

Texas

Stonewater Roofing Ltd. Co. v. Texas Dep't of Ins., 641 S.W.3d 794 (Tx. Ct. App. Feb. 2, 2022)

In 2005, the Texas legislature enacted provisions under the insurance code regulating public insurance adjusting. These provisions provide that any person or entity defined as a contractor is prohibited from adjusting insurance claims for properties at which the contractor will be providing services. Stonewater is a professional roofing company and is not licensed as a public insurance adjuster. Stonewater's website includes multiple statements indicating that it "developed a system which helps [its] customers settle their insurance claims as quickly, painlessly[,] and comprehensively

Cases in Which the NAIC Filed as *Amicus Curiae*

In Re: Penn Treaty Network Am. Ins. Co. (In Liquidation) In Re: Am. Network Ins. Co. (In Liquidation) 284 A.3d 153 (Pa. Oct. 19, 2022) The NAIC submitted an amicus brief to the Supreme Court of Pennsylvania on April 26, 2022, supporting the Liquidator in seeking a reversal of the appellate court's order. The NAIC argued that the Liquidator properly exercised discretion found in Pennsylvania's receivership and guaranty association statutes by equitably distributing the insolvent insurer's estate assets in a way that best protects policyholders. The NAIC has an interest in ensuring Pennsylvania's receivership and guaranty association laws are properly interpreted because they are based on the NAIC's model laws, which have been adopted by other states. On October 19, 2022, the Supreme Court of Pennsylvania affirmed the appellate court's decision holding that there is no statutory authority or any standard to implement the Liquidator's proposal of distributing the insolvent insurer's estate. The Supreme Court incorporated the appellate court's order by reference in support of its decision.

