

8th Circuit Panel Grounds Class Action Over COVID-19 Cancellations

MARCH 4, 2022

Key Takeaways

- A travel-insurance policy exclusion for losses caused by pandemics “if they affect you” applies to flight cancellations spurred by government stay-at-home orders designed to slow the spread of COVID-19.
- A traveler does not need to be infected with COVID-19 to be “affected” by the COVID-19 pandemic. It is sufficient that a policyholder’s flight cancellation-related loss resulted from the pandemic.

On February 9, 2022, the Eighth Circuit affirmed a Missouri district court’s dismissal of Plaintiff Logan Bauer’s class action suit against AGA Service Company d/b/a Allianz Global Assistance and Jefferson Insurance Company, challenging denials of coverage for losses relating to flights canceled as a result of COVID-19 stay-at-home orders. *Bauer v. AGA Serv. Co. et al.*, No. 20-3711, at *1-2 (8th Cir. Feb. 9, 2022). According to the complaint, Bauer had purchased a round-trip ticket to Miami with two corresponding travel insurance policies in January 2020, with plans to travel that April. *Id.* at *2. As a result of federal, state, and local governments issuing stay-at-home orders in March 2020, he alleged that he cancelled his flight and filed a claim for coverage under his travel insurance policies. *Id.* Bauer’s claim was denied. *Id.* AGA and Jefferson moved to dismiss the complaint on the basis that policies clearly excluded coverage for the losses sought by Bauer, and therefore, his claim was properly denied. *Id.* at *3.

The three-judge panel, with Circuit Judges Steven Colloton and Jonathan Kobes joining L. Steven Grasz’s judgment, held that a travel-insurance policy that excludes losses incurred by epidemics, if they “affect” you, is applicable to flight cancellations as a result of government stay-at-home orders intended to slow the spread of COVID-19. *Id.* at *4. The epidemic exclusion in the policies Bauer obtained from AGA and Jefferson barred coverage for losses that affected him, a traveling companion, or a family member. *Id.* The panel concluded that Bauer’s flight cancellation resulted from the COVID-19 epidemic and that the epidemic “affected” Bauer. *Id.*

The panel reasoned that COVID-19 stay-at-home orders, while a reaction to the epidemic rather than the epidemic itself, were “not so unrelated or independent” that the panel could “conclude the COVID-19 epidemic did not affect Bauer.” *Id.* at *7. In rejecting Bauer’s argument that the policies required him to have been infected with COVID-19

to be affected by it, the panel concluded that “while infection is certainly a kind of effect, the term ‘affect’ is not bound to that narrow scope.” *Id.*

Similarly, the panel rejected Bauer’s assertion that the exclusion was inapplicable based on the fact that the World Health Organization (“WHO”) recognized COVID-19 as a pandemic rather than an epidemic. *Id.* at *6-7. The panel concluded “that an ordinary person of average understanding reading the policy terms [at issue] would deduce that WHO ‘recognized’ COVID-19 as either a pandemic or an epidemic by including COVID-19 on its list of pandemic or epidemic diseases” and therefore, “[t]his requirement in the policy [was] satisfied.” *Id.*

This decision comes in the wake of the surge of consumer class actions filed last year seeking reimbursement from entertainment venues, ticketing agencies, and other companies for cancellations arising from the COVID-19 pandemic.

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