

No. 20-1008

IN THE
Supreme Court of the United States

STATE FARM LIFE INSURANCE COMPANY,
Petitioner,

v.

MICHAEL G. VOGT,
Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

**FURTHER SUPPLEMENTAL BRIEF FOR
PETITIONER**

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April 13, 2021

RULE 29.6 STATEMENT

The Rule 29.6 corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

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FURTHER SUPPLEMENTAL BRIEF FOR PETITIONER

On April 9, 2021, State Farm filed a Supplemental Brief alerting the Court to the Ninth Circuit's recent decision in *Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, No. 19-56514, --- F.3d ---, 2021 WL 1257845 (Apr. 6, 2021), which bears on the first question presented in State Farm's Petition for a Writ of Certiorari. On April 12, 2021, Plaintiff filed a Supplemental Brief responding to State Farm's filing.

State Farm submits this further Supplemental Brief because Plaintiff's Supplemental Brief contains a material misstatement regarding the record below. Specifically, Plaintiff represents that State Farm's statement that at least 20% of current policyholders would have been charged *higher* cost of insurance rates under Plaintiff's expert's model in 2017, Pet. Supp. Br. 3, "played no role at trial and rests on evidence the district court excluded under Federal Rule of Evidence 403—a ruling State Farm did not appeal below." Resp. Supp. Br. 5 (citing Dkt. 364 at 306–07).

This statement is incorrect. The fact that at least 20% of current policyholders in 2017 would have higher cost of insurance rates under Plaintiff's expert's model was the subject of testimony presented to the jury and was included in a trial exhibit, as reproduced in State Farm's Petition. Pet. 10 (showing Exhibit 244).

State Farm's expert, Dr. Anne Gron, testified about Exhibit 244, Dkt. 398 at 303:5, and explained that "the total number of policy months that were evaluated in 2017, 20 percent of them had a Witt mortality rate, a pure mortality rate portion of the

COI that was actually evaluated as being greater than the State Farm cost of insurance rate,” *id.* at 305:14–18. Although the district court did not allow Dr. Gron to testify about the specific impact of the model on policyholders in the future, *id.* at 306:6–307:1, she testified that Exhibit 244 shows that “the effect was increasing over time,” *id.* at 306:7; *see also* Pet. 10 (showing a year-over-year increase from 2010 to 2017).¹ And State Farm argued in its motion for decertification and before the Eighth Circuit that the class was improperly certified, in part, because the rates proposed in the model would harm an increasing percentage of class members by charging them higher rates. Dkt. 353 at 2; CA8 Response and Reply Br. 36.

CONCLUSION

The petition for a writ of certiorari should be granted or, in the alternative, held for *TransUnion*.

¹ To support his contention that State Farm’s evidence regarding the impact of the model on policyholders in 2017 was excluded, Plaintiff cites (at 5) Docket entry 364 at 306–07—the sealed version of the relevant trial testimony. Docket entry 398, which State Farm cited in the Petition and again here, is the unsealed version of the relevant testimony.

Respectfully submitted,

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