

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

NATIONAL ASSOCIATION OF STATE FARM AGENTS, INC., \*

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al. \*

Defendants. \*

C.A. No. 02ca004089  
Calendar 7  
Judge Neal E. Kravitz

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**PLAINTIFF’S SUPPLEMENTAL MEMORANDUM  
IN OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS**

Plaintiff National Association of State Farm Agents, Inc. (“NASFA”) responds in this Supplemental Memorandum to the significant inaccurate contentions in Defendants’ “Reply Memorandum.” Defendants’ (“State Farm’s”) Motion to Dismiss is without any merit and the Reply makes that conclusion even more apparent.

**I. ARGUMENT**

**A. The Court Should Consider This Supplemental Memorandum In Ruling On The Motion**

NASFA filed “Plaintiff’s Memorandum in Opposition to Defendants’ Motion to Dismiss” on July 23, 2002 (“Opposition”). Immediately thereafter, one of the counsel for State Farm called one of the counsel for NASFA, and requested that NASFA stipulate that State Farm could file a “Reply Memorandum.” State Farm counsel acknowledged that the D.C. Superior Court Rules did not address the subject of further pleadings after the initial Memorandum in Support and in Opposition. In the spirit of collegiality, and so as to afford all parties an opportunity to

fully brief the issues, NASFA agreed to the State Farm's request, and NASFA agreed further that State Farm might have until the date requested by State Farm to file a Reply Memorandum.

State Farm filed its Reply in August. The Reply is nearly equal in length to State Farm's original Memorandum in Support of its Motion. Promptly thereafter, NASFA counsel called State Farm counsel and asked for the reciprocal courtesy, i.e., that State Farm stipulate that NASFA could file a Supplemental Memorandum in Opposition to the Motion, especially given the length of State Farm's Reply. State Farm counsel advised the next day, however, that State Farm refused to stipulate to NASFA's filing of a Supplemental Memorandum.

NASFA respectfully submits that the Court should consider NASFA's present Supplemental Memorandum. State Farm has had two lengthy opportunities to present its position, and NASFA has had the opportunity to respond only to one of State Farm's memoranda. The right of NASFA's thousands of State Farm agent-members to obtain a declaration of their rights vis a vis State Farm depends upon the Court's ruling on the Motion to Dismiss. It is therefore crucial not only that NASFA, but – more importantly, the Court – be afforded full briefing.

No party which has confidence in the correctness of its position on this Motion should fear a full explication of the law. Certainly, NASFA does not fear that; NASFA welcomes it. We ask the Court to welcome that also.

#### **B. The Law Of The District Of Columbia Applies To This Case**

In its Opposition, NASFA demonstrated that the law of this jurisdiction applies to this case, on either of two bases: because NASFA is incorporated in the District of Columbia, and because the forum for this case is the District of Columbia (Opposition, pp. 4-9). State Farm argues that NASFA is wrong. Below are State Farm's arguments, and the reasons why they are erroneous.

State Farm argues first that, under the Restatement (2d) of Conflicts of Law, Illinois or Maryland law should be applied, because allegedly Illinois or Maryland has a greater interest in this case than the District. State Farm concedes that matters involving a corporation’s “structure or internal administration” will be governed by the law of its State of incorporation. (State Farm Reply, p. 3.)

The law of the District is the governing law here for several reasons. First, *Association of Merger Dealers, LLC v. Tosco Corp.*, 167 F.Supp.2d 65, 74 (D.D.C. 2001) expressly recognizes that the issue of a corporation’s (there, as here, an incorporated association’s), right and standing to sue on behalf of its members is a matter of “corporate governance and internal affairs,” and, therefore, the law of the State of incorporation governs that issue. *Tosco* is quoted on this point in NASFA’s Opposition, p. 5; see also the quotations to Restatement (2d) of Conflicts of Law, § 302 in that Opposition, pp. 6-7.<sup>1</sup>

Next, even apart from the above controlling principle, there is no basis upon which to determine that Illinois or Maryland has a substantially and materially greater interest in this case. As *Tosco* demonstrates (Opposition, p. 6), it is irrelevant that the Defendants are based in Illinois, which is Illinois’ only “interest” in the case. Second, it is self-evident that it is far more significant that NASFA incorporated itself in the District than that its trade association management firm happens to be located in Columbia, Maryland. Yet, not only do Illinois and

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<sup>1</sup> State Farm denigrates *Tosco*’s own citation in support of this pivotal point by observing that the case was cited by *Tosco* “merely” as a “see” cite; State Farm apparently thinks this means the cite is “not directly relevant.” (Reply, p. 5.) Actually, as attorneys familiar with The Blue Book know, “see” is a strong signal. Thus “The Blue Book states:

Introductory Signals

(a) Signals That Indicate Support:

....See: cited authority clearly supports the proposition. “See” is used instead of “[no signal]” when the proposition is not directly stated by the cited authority, but obviously follows from it....

The Blue Book: A Uniform System of Citation at 22-23 (Harv.L.Rev. Assoc. 2000) (emphasis added).

Maryland not have a greater interest in the case than the District, they need an “overriding interest” to supplant the District as the chosen law. Restatement, supra, comment (b) at 308 (Opposition, p. 7). Finally, the fact that NASFA has members across the country argues for the logic and predictability of the use of the law of its State of incorporation. Id. Comment (e) at 309 (Opposition, p. 7).

State Farm argues second (Reply at 8-9) that Judge Breyer’s Opinion in *Zee Medical Distrib. Assoc. Inc. v. Zee Medical, Inc.*, 23 F.Supp.2d 1148 (N.D. Cal. 1998) is not relevant because it supposedly dealt only with “capacity” to sue, and not also with “standing.” (State Farm does not disagree with Judge Breyer’s holding.) In fact, Judge Breyer went on in *Zee* to analyze whether or not the association had the right (standing) to sue on behalf of its members under the law of the forum – California. That is the point of *Zee*: that the law of the forum governed capacity and standing. Similarly, Judge Bucklaw applied the law of the forum in the *Allstate* case, upholding the Allstate agents’ association’s representational standing this past April. (Opposition at 9.)<sup>2</sup>

In sum, whether one adopts the *Tosco* analysis, or that of *Zee* and *Allstate*, the result is the same: D.C. law applies here.

### **C. NASFA Has Constitutional Standing To Sue As A Representative Of Its Members**

#### **1. The Specific Enforcement Argument Is A Red Herring**

State Farm concedes that NASFA meets the first and second tests for constitutional standing under *Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333 (1977), followed in *DuPont Circle Citizens Ass’n v. Barry*, 455 A.2d 417 (D.C. 1983). State Farm argues, however,

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<sup>2</sup> Start Farm’s relegates *Allstate* to a footnote, but the decision is of obvious importance and its conclusion cannot easily be buried in small print.

that NASFA cannot meet the third prong of *Hunt*, because State Farm contends that the participation of individual members of the association in the lawsuit is necessary.

State Farm does not address the controlling authority on that point, *Consumer Fed. Of America v. Upjohn Co.*, 346 A.2d 725, 727 (D.C. 1975), citing *Warth v. Selden*, 422 U.S. 490 (1975), which holds that, when an association seeks a “declaration, injunction or some other form of prospective relief” the relief will “inure to the benefit of those members of the association” and:

Indeed, in all cases in which we have expressly recognized standing in associations to represent their members, the relief sought has been of this kind.

Id. (see Opposition at 10-11).

Ignoring this authority, State Farm argues that NASFA seeks “specific performance,” which supposedly requires an analysis of the damage to each NASFA member. Apart from the fact that NASFA does not seek specific performance, State Farm ignores that “specific performance is a purely equitable remedy...,” *Flack v. Caster*, 417 A.2d 393, 400 (D.C. 1980). As such, specific performance is the third prong of “a declaration, injunction or some other form of prospective relief” which the Courts in *Warth v. Selden*, 422 U.S. 490 and *Consumer Federation*, 346 A.2d at 727, recognized to be proper for the grant of associational representative standing.<sup>3</sup>

State Farm then argues that, because specific performance is only granted when a damage remedy is “inadequate,” the Court must evaluate individual damages before granting specific performance. (*Id.*) The problem with that argument is that – if it were true, then the Court

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<sup>3</sup> State Farm cites cases from 1891, 1904, 1934 and 1938 (!) for the proposition that “declaratory judgment and injunctive relief is just another name for specific performance.” None of these cases dealt with declaratory judgments; none dealt with associational representative standing, or indeed any representational standing. And all precede by many decades the above caselaw.

would have to evaluate individual damages in any request for an injunction, also, because it is hornbook law that injunctive relief is only granted when a damage remedy is inadequate, i.e., when the harm is irreparable. *Family Fed. Savings & Loan Association v. King*, 497 A.2d 115 (D.C. 1985). See generally 11A Wright, Miller & Kane, Federal Practice & Procedure (1995), §2948.1, pp. 139-50 “Irreparable Harm” (discussing adequate remedy in damages as a basis for denial of injunctive relief).

State Farm’s argument would effectively mean that the *Hunt* standard – no need for individual participation in the case – could never be met, because individuals would be required as parties when they sought damages, but also when they sought injunctions. Yet, as the Supreme Court stated (supra), the cases in which associational representative standing has been granted are all cases involving a “declaratory judgment, injunction or some other form of injunctive relief.” For any or all of these reasons, and those stated in the Opposition, State Farm’s argument is particularly far-fetched.

## **2. No Alleged “Conflicts” Among NASFA Members Can Defeat Associational Standing Under *Hunt***

Finally, State Farm, recognizing that the weight of the law is very much against it, nonetheless urges that the “better rule” is that alleged conflicts among NASFA members should prevent NASFA’s standing. (Reply at 12.)

First, the decisions of the United States Court of Appeals for the District of Columbia Circuit are entitled to “great respect.” *M.A.A. v. M.F. Ryan*, 285 A.2d 310, 312 (D.C. 1971). That is particularly true here, where the courts of the District have not spoken on the issue of conflicts among association members. The D.C. Circuit has ruled that alleged conflicts cannot be used as a basis for denying standing under *Hunt*. (Opposition, pp. 13-15.)

NASFA demonstrated in its Opposition (pp. 13-15) that the vast majority of Circuits refuse to deny standing based on alleged conflicts among members, relying on Supreme Court authority. A very recent Law Review article discusses this subject extensively. In “Comment, Associational Standing for Organizations With Internal Conflicts of Interest,” 69 U.Chi.L.Rev. 351 (2002), the author recognizes that, while many courts will not even consider member “conflicts” as a bar to associational standing, “others have found that certain internal conflicts would prohibit standing if the litigation was not properly authorized by the members of the organization.” Id. at 353 (emphasis added). Here, of course, the Board of the Association unanimously approved the suit. (Opposition at p. 15 n.9).

The article, id. at 357, cites *Int’l Union, UAAA Implement Workers v. Brock*, 477 U.S. 274 (1986), for the principle that associational representation provides tremendous advantages both to a court and to an organization’s members, and that the “very forces that cause individuals to band together in an association will thus provide some guarantee that the association will work to promote their interests.” *Brock*, at 290; see, *National Association of College Bookstores, Inc. v. Cambridge University Press*, 990 F.Supp. 245, 251-52 (S.D.N.Y. 1997) (because “unanimity in organizations with thousands of members is rarely possible,” denying representational standing to organizations with internal conflicts of interest “would clearly be inimical to the goals of judicial efficiency: it is precisely in cases where large organizations are present that the greatest benefits are reaped by collective adjudication”).

The article notes that, even with regard to courts that consider the “conflict” issue, “no case has found that uniformity of membership is required, or that any internal conflict of interest automatically forecloses associational standing.” Id. at 360-61. The only two circumstances in which those minority of courts which consider the issue deny standing are described in the article:

[Some] courts have found that “profound” conflicts of interest among the membership can prevent the litigation from being germane to the organization’s purpose.... First, a profound conflict arises where an association seeks standing to directly sue some of its own members. Second, a profound conflict arises if the association did not properly authorize the suit and the litigation, if successful, would cause a direct detriment to the interests of some of its members.

Id. at 362 (emphasis added). Neither of these situations exists here. First, there is no effort by NASFA to sue its members. Second, the suit was properly authorized, so the mere fact that, allegedly, some members may not gain from the suit is irrelevant. (Note that the second prong above requires both lack of proper authorization and detriment, supra.)

The most persuasive words were spoken by the D.C. Circuit in *National Maritime Union of America, AFL-CIO v. Commander, Military Sealift Command*, 824 F.2d 1228, 1233-34 (D.C. Cir. 1987):

Most, or perhaps all, associations, even though created to serve the members’ common interests, will have internal conflicts about appropriate organizational policies. Such conflicts are typically resolved by the association’s internal procedures or political structure. Inevitably, some resolutions will harm some members’ interests, but that is usually accepted as part of the cost of obtaining the benefits of association. Courts would ordinarily uphold an association’s determinations against internal challenge unless it were shown that the organization’s own procedures had been violated. It is not obvious to us that this rationale should not apply to an association’s internal resolution of conflicts about litigating positions.

## II. CONCLUSION

State Farm is intent upon denying NASFA’s thousands of members the right to obtain a declaration of their rights. Perhaps concluding that it cannot succeed in establishing that its agents are wrong on the merits, State Farm has exerted substantial efforts to prevent this Court from ever reaching the merits.

The authorities will not cooperate with State Farm’s effort to escape scrutiny of its practices. Under the law which clearly governs – that of the District of Columbia – and under the constitutional principles of *Hunt*, NASFA may assert its claims as a representative of its members. NASFA has no “right” to win or lose on the merits – but it has every right to reach the merits.

For the foregoing reasons, the Motion to Dismiss should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this \_\_\_\_ day August 2002, a copy of the foregoing was sent by first class mail, postage prepaid to: Lawrence H. Martin, Esquire, Foley Hoag & Eliot, LLP, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Attorney for Defendants.

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