

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

NATIONAL ASSOCIATION OF)	
STATE FARM AGENTS, INC.,)	
)	
Plaintiff,)	C.A. No. 02ca0004089
)	Calendar 7
vs.)	Judge Neal E. Kravitz
)	
STATE FARM MUTUAL)	
AUTOMOBILE INSURANCE)	AFFIDAVIT OF DAVID SWIFT
COMPANY, et al.,)	
)	
Defendants.)	
STATE OF TEXAS)	
)	SS
COUNTY OF BEXAR)	

I, DAVID SWIFT, first being duly sworn, depose and say as follows:

1. My name is David Swift. I am the President of the National Association of State Farm Agents, Inc. (“NASFA”). I have been a State Farm Agent for 32 years in the State of Texas.
2. I am submitting this Affidavit to advise the Court of facts of which I have personal knowledge and that are relevant to Plaintiff’s Motion for Preliminary Injunction.
3. State Farm’s principal vehicle for selling insurance policies has always been through State Farm Agents (“Agents”). In fact, the core of the agreements between State Farm and the Agents is the right of the Agents to sell as many insurance policies as they are able to sell.
4. The Agents operate under one of two agreements. Samples of those Agreements are attached hereto as Exhibit 1 (Agreement AA3) and Exhibit 2 (Agreement AA97). In Paragraph G of these Agreements, State Farm requires the Agent to make his or her State Farm business their “principal occupation.” In the, Preamble to these Agreements, State Farm requires the Agent to continually “increase business commensurate with the available potential.” State Farm also has contracted to allow Agents to “write or service insurance” for other companies, upon State Farms “written consent.” (Agreements, Paragraph G).

5. While State Farm sells a variety of insurance policies, the two primary categories of insurance policies that Agents sell are automobile insurance policies and fire insurance (also referred to as homeowner's insurance) policies.
6. Until recently, and since at least 1977, State Farm never maintained a national or widespread program which restricted its Agents, by month or otherwise, as to how many new automobile and fire insurance policies they were allowed to sell. State Farm has implemented occasional state-specific limits, in response to identified natural disasters, such as hurricanes and earthquakes in limited geographic areas. As set forth below, State Farm new policy is dramatically different.
7. A typical Agent sells, on average, at least 15 new fire insurance policies per month, and at least 30 new automobile insurance policies per month. Additionally, Agents, at any given time, typically insure 2,000 automobiles.
8. Commencing in September of 2001, State Farm, without any notice, started what has now become a nearly nationwide policy severely restricting the number of new insurance policies Agents may sell in any given month (a "no-new business" policy). The restrictions vary, but in general, these restrictions range from the elimination of an Agent's right to sell new fire and automobile insurance policies, to the imposition of limits in the number of new insurance policies an agent can sell per month. State Farm has insured that this policy will in fact threaten the livelihoods of its Agents by denying them customers, because it has coupled the "no-new business" policy with a near-blanket refusal to consent to Agents selling comparable policies offered by other insurers. As recited below, such a near-blanket refusal is different from State Farm's prior practice, and makes a mockery of the good faith and fair dealing required of State Farm in implementing its "consent" procedure. In other words, State Farm decided not to insure against a risk, denying the Agent the ability to sell the policy, and having decided not to accept or compete for that business, State Farm also bars the Agent from obtaining the customer by writing the business for another company which is willing to insure against the risk, on comparable terms. State Farm's policy is thus double-barreled. The Agent is in a room which has two doors, and, whichever way she or he turns, State Farm has slammed the door. State Farm's policy advances at least two goals: First, in violation of its contractual obligations to its Agents, State Farm is able to withdraw over time from the business of insurance. Second, and even more cynically, State Farm is able to drive from the business its experienced Agents, whose State Farm Agreements cannot be terminated (except for breach) until their deaths. This is accomplished because the older, more experienced Agents have Agreements with State Farm that enable them to earn greater commissions on policies than the newer Agents, functioning under newer Agreements, earn from the same business. The older Agreements, (form AA3), however, unlike the newer Agreements (form AA97) contain provisions that provide termination payments and extended termination payments to the Agent based substantially on a percentage of the Agent's book of business existing in the last year before retirement. (Form AA3, Sections IV and V).

Therefore, it is crucial that a Agent retire when her book of business is substantial—but State Farm’s new policies, unless enjoined, will result in the significant swift reduction in the Agents’ books of business. As a result, the older, better compensated Agents whose termination (retirement) payments are tied to their last year, must retire now, or very soon, unless State Farms’ Draconian policy of “heads I win, tails you lose” is enjoined.

9. Attached hereto as Exhibit 3 is a true and correct copy of a memo from Edward B. Rust, Jr. and Vincent J. Trosino, Sr. to State Farm Associates, dated May 17, 2002, explaining the restrictions.
10. State Farm’s new restrictions have drastically disabled, have entirely eliminated, or will disable or eliminate the ability of many Agents to operate their businesses profitably. The majority of Agents are dependent upon their State Farm insurance businesses for their livelihoods, as required by State Farm.
11. An Agent must invest many years into building and establishing her or his clientele and reputations within their communities.
12. Agents invest considerable time, effort, and resources into marketing and advertising strategies, networking, record keeping, and selling State Farm fire and automobile insurance policies.
13. The business implicated by State Farm’s policies is both the Agents’ new business (selling insurance policies to new customers) and the business of maintaining and servicing the Agents’ existing customers.
14. The sale of new insurance policies to new customers is a key and critical component in an Agent’s ability to sustain current customer levels.
15. Each year, some State Farm insurance customers either let their policies lapse or they cancel their policies, resulting in a lapse/cancellation rate.
16. When Agents have been allowed to sell new insurance policies without limitation, this lapse/cancellation rate, has been, on average, fifteen percent per year.
17. Agents have always been able to maintain their current levels of business and even grow their businesses, despite this lapse/cancellation rate, because of the unrestricted ability to sell new insurance policies.
18. Without the ability to sell new insurance policies (be they State Farm policies or insurance policies of other insurance providers), the lapse/cancellation rate is sure to increase, and chip away at the profitability of the Agents’ business because the Agents will not be able to meet all of their clients’ insurance needs. Additionally, the Agents will have no way to replace the business they lose each year due to lapses and cancellations -- an equation that amounts to certain doom for the

Agents' businesses.

19. Consistent with State Farm's "good neighbor" image, each Agent works for years, and sometimes decades, to develop goodwill both existing customers and with his or her surrounding communities. The goodwill that each Agent has cultivated is now jeopardized by State Farm's limitation on, or elimination of, the sale of new insurance policies by the Agents.
20. With the imposition of the State Farm's new restrictions, Agents are unable to service all of the changing insurance needs of their existing customers and they also have to turn away new customers that seek their services.
21. Without the ability to sell State Farm insurance policies without restriction, or, in the alternative, sell insurance for another insurance company, the good will that each Agent has spent significant time, energy and resources to develop will be damaged beyond repair and the very viability of each Agent's business will be severely jeopardized, if not destroyed.
22. The harm to the Agents from the implementation of State Farm's "no-new-business" policy is immediate and irreversible. Agents are already experiencing losses of customers that will, if not enjoined, render their businesses unprofitable and destroying their business.
23. Attached hereto as Exhibit 4 is a true and correct copy of a letter from me to State Farm's President Ed Rust, dated November 25, 2002.
24. Attached hereto as Exhibit 5 is a true and correct copy of a letter from State Farm Senior Vice-President Chuck Wright to me, dated December 4, 2002.
25. I spoke with State Farm Senior Vice-President Ron Dodd on December 23, 2002, and he told me that the limitations would be in place until at least 2004 and that before State Farm could even decide to reverse the "no-new-business" policy, it had to pay off a \$1.2 billion debt.
26. Historically, State Farm has permitted Agents to sell insurance policies for Baldwin Mutual in Alabama.
27. Agents are also permitted to sell health insurance policies for Fortis Insurance and Select Agents are permitted to sell life insurance for Phoenix Mutual. A true and correct copy of the IPSI Agreement is attached hereto as Exhibit 6.
28. Independent insurance agents who sell State Farm policies typically receive commissions on such sales that are at least 5 percent higher than those received by State Farm Agents who have entered into State Farm Agent's Agreements with State Farm.

FURTHER THE AFFIANT SAYETH NOT.

DATED: January 6, 2003, 2003.

By: _____
David Swift

Subscribed and sworn to before me
this 6th day of January, 2003.

Notary Public

My commission expires _____.