

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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NATIONAL ASSOCIATION OF :
STATE FARM AGENTS, INC.,

Plaintiff,

v.

Civil Action No.:

STATE FARM MUTUAL, :
AUTOMOBILE INSURANCE :
COMPANY, et al, :

02ca004089

Defendant.

-----x

Washington, D.C.

Wednesday, July 27, 2005

The above-entitled action came on for
a Bench Trial before the **HONORABLE LEONARD BRAMAN**,
Associate Judge, in Courtroom Number 318, commencing at
approximately 1:53 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT
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COURT, WHO HAS PERSONALLY CERTIFIED THAT
IT REPRESENTS THE RECORDS OF TESTIMONY
AND PROCEEDINGS OF THE CASE AS RECORDED.

Margary F. Rogers
Official Court Reporter

Telephone (202) 879-4635

APPEARANCES:

On behalf of the Plaintiff:

MICHAEL GARNER, Esquire
ALLAN HILLMAN, Esquire
ROBERT O'CONNOR, Esquire

On behalf of the Defendant: _

PAUL REICHLER, Esquire
LAWRENCE MARTIN, Esquire
JAMES WRIGHT, Esquire
Washington, D.C.
* * * * *

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P R O C E E D I N G S

DEPUTY CLERK: Resuming in the trial of National Association of State Farm Agents, Inc. vs. State Farm Mutual Automobile Insurance Company, et al. Civil Action 4089-02.

Counsel, would you please re-identify yourselves for the record.

MR. GARNER: Michael Garner; Haley & Garner, Minneapolis, for the Plaintiff.

MR. HILLMAN: Allan Hillman; Neuberger, Quinn; Baltimore, for the Plaintiff.

MR. O'CONNOR: Robert O'Connor, Jr., Omaha, Nebraska, for the Plaintiff.

MR. WRIGHT: James Wright, State Farm, for the Defendant.

MR. REICHLER: Paul Reichler; Foley Hoag; Washington, D.C., for the Defendants.

MR. MARTIN: Lawrence Martin; Foley Hoag; Washington, D.C., for the Defendants also.

THE COURT: We are ready -- please be seated. We are ready, Mr. Garner, for your first witness on the subject of consent to brokery.

MR. GARNER: That is correct, Your Honor.

And the Plaintiff will call Mr. David Swift.

* * * * *

Thereupon,

DAVID SWIFT,

having been called as a witness for and on behalf of the Plaintiff and having been first duly sworn by the Deputy Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GARNER:

Q Mr. Swift, are you familiar with what the agent agreement says about brokering?

A Yes, sir.

Q Could you turn in your exhibit binder to Exhibit 2?

THE COURT: Are you referring to Plaintiff?

MR. GARNER: Plaintiff, yes.

THE COURT: Plaintiff 2?

MR. GARNER: Plaintiff 2.

THE WITNESS: Yes, sir.

BY MR. GARNER::

Q I will direct you to section 1G.

A Okay.

Q Could you just read that?

THE COURT: Excuse me, Mr. Garner. Plaintiff's 2 is an AA-4 contract.

MR. GARNER: That is correct. Yes, Your Honor.

BY MR. GARNER:

Q And, Mr. Swift, is that the contract that you have with the company?

A Yes, it is.

Q And could you just read that into the record for us, please?

A "The -- of this agreement will be your principle occupation and you will not directly or indirectly write or service insurance for any other company other than State Farm, subsidiary or affiliate, or through any other Governmental or insurance industry plan or facility or for any agent or broker, except in accordance with the terms of any written consent we may give you."

Q Now, does State Farm, in fact, allow agents to broker the products of some other insurance companies?

A Yes, sir, they do.

Q And can you give the Court some examples of the ones that you are aware of?

A Well, currently you can broker insurance through Phoenix Mutual Life Insurance Company, which is a high-end life insurance company that select agents can broker insurance through.

THE COURT: What kind of -- a high?

THE WITNESS: High-end life insurance policies, like two- or three-million dollar policies.

BY MR. GARNER:

Q Anything else?

A Yes. There is Aon, which is a commercial carrier that they write liability insurance through, and I think that's also a select agent you have to be.

They do Fortis, which is a health insurance company they broker business through, but you have to sign what's called an ISP agreement, and that agreement gives the company, State Farm, opportunity to get some commission money from your sale of the Fortis product.

THE COURT: What is their product?

THE WITNESS: Fortis sells health insurance.

And then there is one other, Baldwin County Mutual, that I know about. That's in Alabama. And in Alabama they don't have a FAIR plan, which is a FAIR housing plan for areas where they don't have -- they have high -- the word I'm looking for is high-risk policies. And so the FAIR plan will then cover that, its a government plan. So then in Alabama they don't have a FAIR plan, so Baldwin County Mutual allows them to write that.

But there are some other states --

THE COURT: What kind of risk is it? You say it's a high risk. Risk of what? Is it casualty?

THE WITNESS: Yes, sir, it's homes.

And there are other states that don't have FAIR plans, but they don't have any source to broker anything.

BY MR. GARNER:

Q Let me just clarify. You're saying that although Baldwin -- the -- State Farm allows brokering of Baldwin Mutual in Alabama because it doesn't have a FAIR plan that it does not permit agents to broker in other states, even though those other states do not have FAIR plans?

A That's correct.

MR. REICHLER: Objection, Your Honor. As one who is guilty of the sin of leading the witness, I think I can recognize a leading question when I see it.

THE COURT: It seems to me your point is well taken.

It's leading, Mr. Garner.

MR. REICHLER: It wasn't -- I don't know if --

MR. GARNER: I don't it's already on the record.

MR. REICHLER: Yes. So it should be stricken from the record, then. If the answer got in, it should be stricken, Your Honor.

THE COURT: Let it be stricken.

BY MR. GARNER:

Q Mr. Swift, with respect to Baldwin Mutual --

A Yes.

Q -- do you have any understanding from State Farm as to why it permits agents to broker in Alabama?

A Yes. It's because they don't have a FAIR plan there.

THE COURT: What do you mean by FAIR plan?

THE WITNESS: It's a government plan, sir, that allows people when they can't get insurance through standard companies, to be able to get insurance. And that's what the FAIR plan is, sir.

THE COURT: But I thought you said that Baldwin is a government?

THE WITNESS: No, sir. They allowed them to write through Baldwin because they do not have one of those plans in Alabama.

THE COURT: Very well.

BY MR. GARNER:

Q Are you aware that there are other states that do not have FAIR plans?

A Yes, there are many states that do not have FAIR plans.

Q Does State Farm permit agents to broker in those states?

A No, they do not.

Q Now, what -- with respect to consent to brokering, what is NASFA asking for in this case?

A What we are asking is to be able to -- in a situation where State Farm does not either write the business or does not want the business, we are asking them to allow us to broker the business.

Q And what companies do agents want to broker with?

A Well, basically it would be companies like -- that are not in competition, direct competition with State Farm on a multiline basis, but companies more that the independent agents would write through; Travelers, Hartford, INA, Texas Select. Those types of companies.

Q And why do you want to broker with those companies?

A Why do I want to broker? Well, because in the

past we have not been able to take care of our clients, our clients' needs, because we haven't been able to write that business.

Q Okay. Is there business you can't write?

A Yes, sir, there is. There is stuff like on the sea coast in the State of Texas, we can't write that business. They -- State Farm --

THE COURT: What kind of business is that, sir?

THE WITNESS: I'm talking about home business, sir, homeowners.

And we can't write along the Texas coast at all.

BY MR. GARNER:

Q And why is it that you want to be able to write that business through brokering the products of other companies?

A Well, actually the reason why is because State Farm, like all other companies, wanted us to be a multiline company. And when we can't write all the business, then we will lose, like if we had their automobile business and they came to us to write their home, if we couldn't write their home, then they would end up taking all their business to the other carrier and we wouldn't have -- we would lose what we had. We would lose the automobile business that we had because we couldn't write their home.

BY MR. GARNER:

Q And so if you are able to broker that home business that you can't write, what happens with the auto

business?

A Well, we would be able to hope to keep that. That's our goal, is to be able to keep the business that we have without losing business. And that's the whole goal of this, is that the agents' policy counts are going down because we can't keep, you know, we can't write all lines of business.

Q Now, would you want to continue to broker another carriers' insurance if State Farm offered that insurance?

A We wouldn't have a need to. If they offered that insurance, we would write it through State Farm.

Q And if you had previously sold a policy of another insurer during the period you were brokering and then State Farm offered it, what would you do?

A Well, probably we would do exactly what the independent agents do. We would move that business back to like your main carrier, which would be State Farm. And hopefully then State Farm could write the business and we would move it back there, because that's where our retirement income comes from, is from our main company, State Farm.

Q Now, Mr. Swift, have you ever asked to broker another line of insurance from State Farm?

A Yes, I have.

Q And what did you do in that respect?

A I wrote Ed Rust a letter requesting the permission to be able to broker insurance.

THE COURT: Do we have a copy of that letter?

MR. GARNER: I don't think we do.

If I may proceed.

THE COURT: Well, I would like to know why we don't have a copy of that letter, if that's going to be the basis for the Court making an adjudication, I would like to have the best evidence.

MR. GARNER: Well, he had a conversation that I would like to elicit.

THE COURT: I thought that he said that he had written a letter.

MR. GARNER: And then that followed with a conversation.

THE COURT: Again, I say, do we have the letter?

MR. GARNER: I can try to locate it. We will find it and supply it, your Honor.

BY MR. GARNER:

Q Did you have a conversation with somebody?

A Yes. Mr. Rust then sent the, I guess, the response down to Ron Dodd, who was the senior vice president.

THE COURT: Ron?

THE WITNESS: Ron Dodd, yes, sir. D-O-D-D. And he's the --

THE COURT: Senior vice president?

THE WITNESS: In Austin, Texas, yes, sir. I think that's his title.

BY MR. GARNER:

Q Did you had a conversation with Mr. Dodd?

A Yes, I did. And he told me that we weren't going to be able to broker business.

Q Are you aware of any other agents that have asked to broker?

A Yes, I am.

Q Are you aware of any that have been granted permission?

A No, I'm not.

Q Let me direct you to Plaintiff's Exhibit 45. And I would ask you to turn in that to a page that is on the letterhead of State Farm Insurance Company, a letter to a Mr. Terry McManus from Michael Hargis.

THE COURT: Terry?

MR. GARNER: McManus.

BY MR. GARNER:

Q And if you look on the second page of that letter, do you see --

THE COURT: Wait a moment, please. Yes, go ahead.

BY MR. GARNER:

Q Do you see where at the top of the second page it says, "In deciding whether to grant its consent, State Farm considers the following factors: The general market situation, the potential for conflicts of interest, the possibility of customer confusion, the potential for claim handling complications, the potential liability to State

Farm in the event that the other insurer fails to perform to the agent's satisfaction, the difficulty in protecting trade secrets, the protection of State Farm brand, the value of the training and support provided to the agent and staff, the long-term potential to market the line of business through State Farm or a partnered company."

Now, are you aware of any of these factors being problems in brokering business of another insurer?

A Well --

THE COURT: You mean with regard to his own experience, Mr. Garner?

MR. GARNER: Yes, with regard to his experience.

THE WITNESS: Well, I would think there would be any -- since we currently do broker through Phoenix, Aon, Fortis, and Baldwin, those are all done currently. And so if we would be having any confusion, I think we would have those in those also.

MR. REICHLER: Your Honor, object. Move to strike. It's not responsive. He's speculating. There is no foundation laid for the fact that this gentleman has any personal experience in brokering. I believe Your Honor specified that he should testify from his personal experience. And there's no foundation laid that he has any, and the answer was strictly speculative; it would be, it would be.

THE COURT: It seems to me that the objection is well taken, Mr. Garner.

MR. GARNER: Mr. Swift, do you have any -- I'll withdraw it.

BY MR. GARNER:

Q Mr. Swift, do you have any personal experience with brokering products of other companies?

A No, I do not.

MR. GARNER: Nothing further at this time.

THE COURT: Mr. Reichler?

CROSS-EXAMINATION

MR. REICHLER: Thank you, sir.

Your Honor, I didn't want to interrupt Mr. Garner's examination by saying so, but if the Court still wants a copy of letter to which Mr. Swift referred in his direct examination, we would be happy to supply it to the Court.

THE COURT: Yes, I would like to see it.

MR. REICHLER: In fact, with the Court's permission, we would like to hand it to the witness as well, because I do have some questions about it.

THE COURT: Proceed.

MR. REICHLER: Thank you, Your Honor.

BY MR. REICHLER:

Q Good afternoon, Mr. Swift.

A How are you doing?

Q I'm doing fine. I hope you are, too.

A Good.

Q In your capacity as a representative of NASFA, you

wrote a letter to the Chairman of State Farm, Ed Rust, Jr., on November 25th, 2002, did you not?

A That's correct.

THE COURT: What was your office?

THE WITNESS: I was the president, sir.

MR. REICHLER: With the Court's permission, since I'm going to ask some questions about the letter, I would like to have the letter marked for identification.

DEPUTY CLERK: Your Honor, Defendant's 79.

THE COURT: Is there an objection to this coming into evidence, Mr. Garner?

MR. GARNER: No, Your Honor.

THE COURT: It will be admitted.

(Defendant's Exhibit Number 79 was admitted into evidence.)

BY MR. REICHLER:

Q You have the letter in front of you, Mr. Swift?

A Yes, I do.

Q In this letter you requested permission to broker business for other insurance companies, correct?

A That's correct.

Q Would you please read the part of the letter -- if you look in the second paragraph, I would like to focus your attention to the sentence that begins with the word "accordingly." And would you take a moment to find that, the sixth line down in the second paragraph, about the middle of that line you will see the sentence beginning --

THE COURT: It's the last sentence of the paragraph, in fact.

MR. REICHLER: That's correct.

BY MR. REICHLER:

Q Would you read that, please?

A Sure.

"Accordingly, we seek to mitigate the reputable damages that will befall our agents by requesting, on behalf of all agents, that State Farm provide agents with written permission to write and service automobile and homeowners insurance policies for all other insurance carriers in states where State Farm has limited, in any capacity, the agent's ability to sell new insurance policies."

Q So the words "all other insurance carriers" are in that sentence?

A That's correct.

Q And you wrote this letter on behalf of all 17,000 State Farm agents, not just those, however many there may be, that belong to NASFA, right?

A That's correct.

Q And you asked that State Farm give all, every one of its agents, permission to broker business for other insurance companies?

A That would be correct.

Q And you asked for permission to broker business for all other insurance carriers in states where State Farm had limited production of new auto and fire insurance

policies, correct?

A That's correct.

Q And at the time you wrote this letter, that would have been all other insurance carriers in more than 40 states, correct?

A Yes, it would have been.

Q Your request included permission to broker business for insurance companies with which State Farm was in direct competition, correct?

A You can take it to be that, yes.

THE COURT: Well, is that what you intended, sir?

THE WITNESS: What I intended to do was to solicit the business for carriers that would allow us to write, and that would be mostly the independent companies that I referred to earlier.

MR. REICHLER: May I have Mr. Martin give the witness a copy --

THE COURT: Wait a moment. The letter says for all other insurance carriers.

THE WITNESS: Yes, sir, that's correct. But Allstate is not going to allow us to write, and neither is Nationwide, nor is Farmers going to allow us to write, a State Farm agent, to write through them. They won't do it. They won't allow you to broker through them. So by all carriers, it probably should have said all independent companies then, but that's what it should have been.

THE COURT: What do you mean by independent

companies?

THE WITNESS: The ones that the independent insurance companies write to; INA, Travelers, Hartford, those types of companies. Texas Select.

THE COURT: Independent companies as compared to what companies?

THE WITNESS: As direct writing companies like Nationwide, Allstate, Farmers and American Family, those are all direct writing companies that are in competition with State Farm, selling full lines of insurance through direct writers.

THE COURT: And independents are not direct writers?

THE WITNESS: No, sir, they are not. They are not captive writers. They write for different companies.

THE COURT: What was an example of such an independent?

THE WITNESS: The independent companies were like INA, Travelers and Hartford, and those companies.

THE COURT: They write for other companies?

THE WITNESS: The independent agents write that business for all kinds of different agents. They don't have just one carrier.

THE COURT: Oh, your distinction is based upon the agents, whether they are exclusively connected with one insurance company or as distinguished from general agents?

THE WITNESS: Yes, sir.

THE COURT: And you meant to say independent agents with general agents?

THE WITNESS: Yes, sir, that's what it probably should have said was that. That's correct.

MR. REICHLER: Well, may I continue, Your Honor?

THE COURT: Yes.

BY MR. REICHLER:

Q You are not an independent agent, are you?

A No, I'm not.

Q You are an exclusive agent for State Farm?

A That's correct.

Q And as such you have a fiduciary obligation to State Farm?

A Yes.

Q If you brokered business for another company and actually sold a policy for another company, don't you also take on a fiduciary obligation to that company for which you acted as agent and sold one of their products?

A Sure.

Q And you don't see any possibility that if you try to bring the customer back into State Farm, in order to maximize your retirement income, you might be in a conflict of interest situation between your competing fiduciary obligations to the other carrier and to State Farm?

A Not at all. It's done every day in the independent business world.

Q But you are not in the independent business world,

are you?

A But all the other --

Q Is that a yes or no answer, Mr. Swift?

A I'm not in the independent business world, that's correct.

THE COURT: You may explain your answer.

THE WITNESS: Yes, sir. We could bring it back and it wouldn't be a problem because independent agents move business every year from one company to the next company. And that's what we would do, would bring the business back to State Farm from another company. That's not a fiduciary problem because independent agents do that every single year.

THE COURT: I don't think that's the point that Mr. Reichler was making. You are an agent that writes exclusively for State Farm. State Farm hypothetically is giving you permission to write for another company. The question was, depreciating your relationship to State Farm and the relationship that you have for the independent company at which you were writing by consent of State Farm, do you perceive a conflict of interest in that?

THE WITNESS: Actually, no, sir.

THE COURT: Even though your situation is different from a general agent?

THE WITNESS: Yes, sir.

BY MR. REICHLER:

Q Who do independent agents or general agents

represent? Do they represent the consumer or do they represent the company, the insurance company?

A That's a good question. I don't know the answer to that. I think they probably represent both.

Q Both?

A Yes.

Q So they have fiduciary obligations, in your opinion, both to the policyholder and to the insurance company that they are selling the policy for?

A How could you not have responsibilities to both parties?

Q Is that your -- you're supposed to answer my questions, not ask me questions, Mr. Swift.

A Well, I'm just asking you the question because I don't understand your question.

MR. REICHLER: Would you please direct --

THE COURT: He doesn't understand the question.

BY MR. REICHLER:

Q In that case, I will. So your testimony is that independent agents who write business for many different companies have fiduciary obligations, both to the policyholder and to the -- whichever insurance company they happen to sell the policy for?

A I would think they would, yes.

THE COURT: You don't think they would?

THE WITNESS: I said I do think they would, yes.

BY MR. REICHLER:

Q You don't think that the independent agent is a broker representing the policyholder, not the company? You don't agree with that?

A No, I don't.

Q And so if the agent, independent agent, sells the policy to a policyholder, the policy of Travelers to a policyholder, the independent agent has a fiduciary obligation to Travelers?

A Yes.

Q So if you, as a State Farm agent, sells that same policyholder a Travelers policy, you have a fiduciary obligation to Travelers, at the same time that you have a broader fiduciary obligation to State Farm, correct?

A Well, I don't why I would have a broader fiduciary responsibility to State Farm.

Q I think you said you have a fiduciary obligation to State Farm as an exclusive State Farm agent.

A Yes, but I don't know why it would be bigger than the one with State Farm.

Q Then let's not worry about the size.

You have agreed that you would have a fiduciary obligation to Travelers if you sold this policy to a policyholder?

A That's correct.

Q Now, you said you wanted to bring back that policyholder to State Farm?

A Yes.

Q And that that's in your interest to do so, your personal interest, because that would enhance your retirement income?

A Yes.

Q What happens to your fiduciary obligation to Travelers with respect to that policyholder?

A Nothing.

THE COURT: I think the questioning is now becoming excessively argumentative. Move on, sir.

MR. REICHLER: I am moving on.

BY MR. REICHLER:

Q Let's go back to the letter where you requested brokering. I had asked you, and then His Honor asked you some questions about your answer, but I would like to, with the Court's permission, to pick up where I left off. And I had said that your request, your written request to State Farm included a request for permission to broker business for insurance companies with which State Farm was in direct competition, correct?

A Yes. By the wording of this letter, yes.

Q And, in fact, you agree, don't you, that State Farm is in direct competition with any other insurance company, large or small, regional or national, correct?

A No, not really.

Q I would like to have you take a look at your deposition.

MR. REICHLER: Your Honor, I would like to take

this opportunity to advise the Court that following the Court's request yesterday, all of the depositions have been filed with the Court.

THE COURT: Thank you, Mr. Reichler.

Mr. Garner, did you file the depositions that you used, I believe, yesterday?

MR. GARNER: We have not yet, but we do have it ready for filing. If Mr. Reichler is representing it has been filed, I don't want to be duplicative.

THE COURT: Make sure you file it today.

MR. GARNER: We will.

MR. REICHLER: I didn't represent that we have filed the depositions that you -- I represented that we had filed the depositions mentioned by His Honor that we have been using in our cross-examination.

THE COURT: Proceed.

BY MR. REICHLER:

Q Now, Mr. Swift, would you please turn in your deposition to page 17.

Are you with me?

A Yes, I am.

Q I'm going to ask you to start with me at line 21 and we will read together. I will do the questions, you do the answers. I think we did this once before. Didn't we do this yesterday?

A Yes.

Q I will read the questions. If you would be kind

enough to read the answers. We are going to be reading, once again, between page 17, line 21 and page 18, line 6.

A Okay.

"Q This would include, your request would include permission or written consent from State Farm to write policies for companies with which State Farm was in direct competition, then?

"A Well, State Farm is in direct competition with any other insurance company.

"Q So the answer is yes?

"A Yes.

Q You want to change the answer that you gave to my question before we brought this deposition in front of you?

A Well, not really.

Q Okay. You don't have to.

THE COURT: You can explain your answer if you wish to.

THE WITNESS: Yes, sir. My direct competition, it may be a little confusing for some people, but the -- when we are talking about autos, homes, life, as a multiline company that State Farm is, if you only have a company like a company in Texas called Texas Select, they only write home insurance. That's all they really write. So I don't know that they are in direct competition with all the -- they are not in direct competition with all the products that State Farm sells. They are just selling one-niche market, which is in this case a homeowners market.

BY MR. REICHLER:

Q You said that the request, as you worded it, covered all other insurance companies?

A Yes, that's correct.

Q And that includes companies with which State Farm is in direct competition, isn't it?

It may include some with which it is not in competition with, but it includes all companies, includes insurance companies with which State Farm is in direct competition?

A Yes. The letter I wrote says that, that's correct.

Q And you testified at your deposition that State Farm is "in direct competition with any other insurance company," correct?

A They are. That's what I stated.

Q Now, you had mentioned certain exceptions that you say that State Farm has granted to its no brokering of business policy, correct?

A That's correct.

Q You mentioned, for example, Baldwin County Mutual in Alabama.

A That's correct.

Q And you said that those -- that's a company that sells high-risk policies to homeowners?

A That's correct.

Q And State Farm is not in that business in the State of Alabama, is it?

A No, they are not.

Q On that particular line of business for which State Farm has given consent for some agents to broker for Baldwin Mutual, State Farm is not in competition on that particular line of business in Alabama?

A In Alabama, no.

Q You -- the other examples you gave were Fortis, the company Fortis, you said health insurance?

A That's correct.

Q Now, State Farm actually has entered into a business alliance with Fortis, haven't they?

A I don't know what they have entered into.

Q You are not aware that there is actually a business venture which has a contract which State Farm and Fortis have signed, and so they actually have formed a business alliance with respect to the marketing of some insurance products?

A No, I'm not.

Q And you agree that State Farm doesn't, on it's own, sell the particular types of health insurance policies that Fortis offers?

A They still have some on the books because I have some currently. They had them and they just quit writing them to start writing with Fortis.

Q So they quit writing them. State Farm is out of that market right now?

A No. They still have some policies on the book.

They are not writing new policies, but they have policies on the books that still compete with Fortis.

Q But State Farm has decided not to sell anymore of that kind of insurance, correct?

A That's correct.

Q Now, since you don't know -- well, the Aon -- you mentioned Aon?

A That's correct.

Q State Farm, likewise, has a business -- has formed a business alliance, a contractual arrangement with Aon to cooperate in the marketing of certain insurance products, correct?

A I don't know. I don't know what State Farm has done.

Q You don't whether it has happened or not, correct? So you are not denying it, but you are not acknowledging it?

A I don't know.

Q The same with Fortis, you don't know?

A I don't know what kind of alliance they have made.

Q In connection with Phoenix Mutual Life, similarly, State Farm has entered into a business alliance, a former business alliance with Phoenix Mutual Life to work together in the marketing of certain insurance products, correct?

A That's correct. They sell life insurance, but so do we. We sell life insurance also.

Q But that's wasn't my question. My question was --

A I'm sorry.

Q And maybe you did answer it before you give an explanation, but -- then you are aware that State Farm has entered a formal business alliance to jointly market certain insurance products, correct?

A No, not of a formal alliance. I know nothing about any formal alliances. I just know that they might through Phoenix.

Q So there might be a former alliance between State Farm; there might not. You don't deny it, in any event?

A Right. No, I don't know.

MR. REICHLER: I have no further questions.

THE COURT: Redirect, Mr. Garner.

MR. GARNER: We don't have anything further.

THE COURT: Thank you, Mr. Swift. You are excused.

Mr. Garner.

MR. GARNER: Plaintiff calls Clifford Mueller.

* * * * *

Thereupon,

CLIFFORD MUELLER,

having been called as a witness for and on behalf of the Plaintiff and having been first duly sworn by the Deputy Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GARNER:

Q Would you state your name for the record, sir.

A Clifford Harry Mueller.

Q And where do you live, Mr. Mueller?

A Amosville, Virginia.

Q Are you a State Farm agent?

A I am.

Q How long have you been a State Farm agent?

A Thirty years.

Q How did you become a State Farm agent?

A I asked my State Farm agent if his manager had an opening, and went to his manager. He didn't have an opening, but he knew another manager that did, and I applied with him.

Q Which agents agreement are you an agent under?

A The AA34.

Q Did you ever ask the company for permission --

THE COURT: Excuse me -- AA34?

THE WITNESS: Yes, sir. I Started under the AA3 contract and then signed the AA4 addendum.

THE COURT: So presently you are operating under four?

THE WITNESS: Yes, sir.

BY MR. GARNER:

Q Did you ever ask the company for permission to broker other lines of insurance?

A Yes, sir, I did.

Q And why did you ask?

A State Farm had stopped writing fire insurance in

Virginia.

Q And was that request in the form of an e-mail?

A Yes, sir. I sent an e-mail to our zone vice president, Doug Thompson, requesting the permission.

Q And --

THE COURT: Zone vice president.

THE WITNESS: Yes, sir.

THE COURT: That was Thompson?

THE WITNESS: Yes, sir.

MR. GARNER: Your Honor, I have here a document, which is a copy of the e-mail and of a subsequent response. We have not previously marked it, although I discussed with Mr. Reichler whether there would be any objection, and he has no objection.

THE COURT: Very well. Proceed.

BY MR. GARNER:

Q I would like to ask that it be marked as Plaintiff's Exhibit 92.

DEPUTY CLERK: Plaintiff's 29, Your Honor.

THE COURT: Very well.

MR. GARNER: May I proffer the exhibit to the witness?

THE COURT: Mr. Mueller, before we proceed, your name is pronounced Mueller.

A That's correct.

THE COURT: But it's spelled M-U-E-L-L-E-R?

THE WITNESS: Yes, sir.

BY MR. GARNER:

Q Mr. Mueller, directing your attention to the e-mail at the bottom portion of this page. Is this the e-mail that you -- that you wrote to Mr. Thompson?

A Yes, sir.

Q Now, did Mr. Thompson respond to you?

A No, sir. He brought it down to the chain of command, to Vice President Bill Whitney.

Q How do you know that?

A Mr. Whitney gave me a phone call saying that Mr. Thompson had referred the matter to him. And I asked Mr. Whitney if he was speaking with full authority of the company to either grant or deny my request to broker, and he said he was.

Q And did he say that you could broker the products of other companies?

A No. He refused me to broker any other companies.

Q What did he say?

A That it really didn't matter whether I was speaking to himself or Mr. Thompson, that I would never be given permission to broker with any other company.

Q And how did you respond to Mr. Whitney?

A I had said to him that since my contract required that I put my requests in writing, I asked him to put his response in writing.

Q And did he do that?

A Yes he did. Unfortunately --

Q If you would look at Exhibit 92 --

THE COURT: Perhaps you ought to give me an opportunity to read 92, Mr. Garner, before you read further.

MR. GARNER: Sure.

(Pause in proceeding.)

THE COURT: Thank you.

BY MR. GARNER:

Q Mr. Mueller, looking at the top portion of Plaintiff's Exhibit 92, is that an e-mail that you received from Mr. Whitney?

A It is.

Q And that was in response to your request to him to put his response in writing?

A Yes, sir.

Q And did you have a further conversation with him?

A I did not have a conversation with him. I sent him another e-mail.

MR. REICHLER: I object, Your Honor. I object and move to strike. That wasn't the question. He asked if there was another conversation.

BY MR. GARNER:

Q Did you communicate with Mr -- I will withdraw it.

THE COURT: Go ahead.

BY MR. GARNER:

Q Did you communicate with Mr. Whitney further?

A Yes, I did.

Q What did you do?

A I sent him another e-mail stating that I believe he must have misheard me, that the words "Nationwide or Allstate" never passed my lips in our conversation, that I had mentioned to very small regional companies, Loudon County mutual and Northern Neck are the companies that I was hoping to write fire insurance with.

THE COURT: What was the second company?

THE WITNESS: Loudon Country Mutual.

THE COURT: And?

THE WITNESS: Northern Neck.

BY MR. GARNER:

Q Do you know have a copy of that subsequent e-mail?

MR. REICHLER: Objection, Your Honor.

All right. I withdraw the objection.

THE COURT: Very well.

THE WITNESS: I don't have a copy of the e-mail. I have some notes that I made that were in my deposition.

BY MR. GARNER:

Q Did Mr. Whitney respond to you?

A No m,he did not.

Q Were there other reasons that you asked permission to broker, other than the fact that you couldn't sell fire insurance?

A Yes. My clients and prospective clients and centers of influence that I had worked to develop for over 25 years were asking me to write fire insurance. And it

was very embarrassing for one who purports to be everybody's good neighbor not be able to take care of their needs.

Q Did this have any effect on any of your business?

A Yes. When people come to us they usually want both their fire and their auto written as a package. And if I can't write the fire insurance, I'm not going to write the auto insurance either.

Q Are you aware of whether other insurance companies present representation of more than one company by their agents?

A Yes.

Q And do they?

A Yes, they do.

Q And how do you know that?

A My son is an independent agent and writes for several companies all the time.

Q And are you aware of any problems that your son have had with that?

A No.

Q If State Farm offered all lines of insurance, would you want to broker?

A If State Farm offered all lines of insurance, I would not have a need to broker.

MR. GARNER: Nothing further at this time.

CROSS-EXAMINATION

BY MR. REICHLER:

Q Good afternoon, Mr. Mueller.

A Mr. Reichler.

Q Your son, you said, is an independent agent?

A That is correct.

Q He's not an exclusive agent?

A No, he's not.

Q But you are?

A I am.

Q And you agree that as an exclusive State Farm agent, you agree in your AA4 agreement that you would not broker or write business for any other insurance company without State Farm's express written consent, correct?

A That is correct.

Q And you agree that it is reasonable for State Farm to refuse to consent to its agents brokering or writing business for competitors like Allstate or Nationwide, correct?

A For competitors such as Allstate and Nationwide, I would say yes.

Q Yes, that it is reasonable for State Farm to deny permission to broker for such companies?

A Yes.

Q So if you had requested, for example, consent to broker fire insurance business for a State Farm competitor like Allstate or Nationwide, it would have been reasonable in those circumstances for State Farm to deny your request,

correct?

A Yes.

Q Yes.

I'm sorry.

THE COURT: Let him finish.

You may finish, sir.

THE WITNESS: Thank you, sir. The conflict of interest between Allstate and Nationwide and State Farm would be, in my opinion, absolutely insurmountable, which is why I would never even consider such an avenue of approach.

Q So if you had requested permission to broker fire insurance business for any other direct multiline competitor of State Farm, it would have been reasonable for State Farm to deny your request?

A Multiline line competitor, yes, sir, in the Commonwealth of Virginia.

Q But you claim that it was arbitrary and capricious in the extreme for State Farm to refuse your request to broker fire insurance for Northern Neck?

THE COURT: For what?

MR. REICHLER: Northern Neck. That's company he mentioned on direct, Your Honor.

BY MR. REICHLER:

Q Because they were not a direct multiline competitor of State Farm?

A That's correct.

Q They just sold fire insurance?

A That's correct.

MR. REICHLER: I would like to mark an exhibit for identification, Your Honor.

MR. MARTIN: Your Honor, may I approach the witness?

THE COURT: Yes.

DEPUTY CLERK: Your Honor, Defendant's 80.

BY MR. REICHLER:

Q Mr. Mueller?

A Yes, sir.

Q Defendant's Exhibit 80 is a printout of the pages of Northern Neck's website. Would you please review it and tell me if you have any reason to believe it is not?

THE COURT: Are you testifying that that's what it is?

MR. REICHLER: I am proffering it and representing --

THE COURT: You may bring that out through another witness.

MR. REICHLER: All right. That's fine, your Honor. I still would like to ask the witness questions about it.

THE COURT: Oh, I have no problem with this. If you connect it up, it's fine.

MR. REICHLER: Okay. Thank you.

BY MR. REICHLER:

Q Mr. Mueller, can you tell what this is, from looking at it?

A It looks to be a printout of an offering of Northern Neck's line of insurance.

Q Good. And just take a look, for example, of the first page. In the middle of the first page, you see the heading "auto"?

A Yes, sir.

Q Would you read the language under that?

A From country lanes to suburban boulevards, whenever you drive in Virginia, we can insure your private passenger vehicles. Our competitive rate for responsible drivers, and complete coverage give you best protection on the road today, whether you live in rural Virginia, on the Eastern Shore in Tidewater, Southwest, the Shenandoah Valley, or country, you will find one of our independent agents right around the corner ready to sit down over a cup of coffee.

Q I'm sorry. I just said the first paragraph. Thank you for volunteering that, but the first paragraph is enough.

A I'm sorry.

Q Can you turn to the fifth page of this document.

A My fourth page is blank.

Q Yes.

A The next one after that.

Q What does it say under the caption? What is this

part called?

A Auto program.

Q And you can skip the first sentence. And read of that portion, can you just read the two very short sentences that begin with "we specialize"?

A We specialize in providing competitive rates for drivers who take seriously the responsibility of owning and operating a vehicle in Virginia.

Q Next sentence.

A Our programs provides?

Q And would you just read those -- well, you don't have to. We will stop there. I think the document speaks for itself.

THE COURT: Mr. Reichler, I think you made your point.

MR. REICHLER: Yes.

BY MR. REICHLER:

Q Would you also take a look on that page at the left-hand column and read what it says under "our coverages"?

A Our coverages; homeowners, second seasonal homes, farms, double wine owners, manufactured homeowner, modular homeowners, condominium owners, renters, landlords and automobile.

Q Thank you.

In fact, Northern Neck competes with State Farm in some of these lines of coverage?

MR. GARNER: Object to the form of the question.

THE COURT: Pardon me?

MR. GARNER: Object to the form of the question.

The testimony that was given related to a request that was made in 2002. And counsel is asking a question that pertains to the state of the affairs today.

MR. REICHLER: I can cure that.

THE COURT: Then withdraw the question.

MR. REICHLER: I will withdraw the question and ask a different one.

BY MR. REICHLER:

Q Would you turn to the very first page and look down at the bottom of it where it says "copyright."

A Yes.

Q Would you read that?

A Copyright 2002, 2004, Northern Neck Insurance Company, all rights reserved.

Q That's fine. Now would you take a look at this page, the left, and bearing in mind the list --

THE COURT: What page?

MR. REICHLER: The first page. We will stay on this page. It would be easier.

BY MR. REICHLER:

Q The list of our coverages, which is the same is on page 5.

A Yes, sir.

Q State Farm also sells many of the same types of

policies as are listed here, correct?

A Today or at the time I made the request?

Q Let's start with today.

A Today they sell --

THE COURT: I'm interested in the year 2002.

BY MR. REICHLER:

Q State Farm sold auto insurance in 2002, didn't it?

A Yes, sir.

Q Now --

THE COURT: The point was made by Mr. Garner that Defendant's 80 does not speak to the year 2002.

MR. REICHLER: Your Honor, it was copyrighted in 2002.

THE COURT: I don't know what that copyright covers. Is it covering page 1 as we see it?

MR. REICHLER: Well, Your Honor, I would -- I don't know want to testify -- but even if it just covered page 1, that would be sufficient.

THE COURT: Well, I don't know that it does, and I don't know whether it covers -- I don't know the coverage -- the scope of the copyright. I don't know that the web page -- the website was the same in 2002. It may well be, but I don't know.

BY MR. REICHLER:

Q Mr. Mueller?

A Sir.

Q Do you deny that in 2002 --

THE COURT: That isn't proof that they sold auto insurance in 2002.

BY MR. REICHLER:

Q Do you know whether Northern Neck sold auto insurance in 2002?

A No, I do not.

Q So it's very possible they might have?

A It is possible.

Q And it also -- well, never mind.

I would like to have another document marked as --

THE COURT: Very well.

MR. REICHLER: -- an exhibit.

MR. MARTIN: Your Honor, may I approach the witness again?

THE COURT: Yes.

DEPUTY CLERK: Your Honor, Defendant's 81.

MR. GARNER: Your Honor, before counsel begins questioning, I want to note the same objection. This is another printout that has a date of July 26, 2005, on it, and I don't see the reference.

THE COURT: Mr. Reichler, unless you are able to proffer to me that you will have evidence that the coverage described here also applied in 2002 particularly October 2002, I must sustain the objection.

Now, if you proffer me that testimony that you will produce that testimony, you can go right ahead and

examine the witness.

MR. REICHLER: Thank you, Your Honor. I will attempt to do that, and I will ask questions similar to the ones I did with respect to Northern Neck that were not objected to and avoid the problem that way.

THE COURT: I'll permit counsel to proceed on that basis. If the testimony is not produced, Mr. Garner, I will invite a motion to strike.

MR. GARNER: Your Honor, thank you. I just also want to point out that on this Loudon Mutual website there is a copyright notice 2003, which would support the inference that it did not exist in 2002.

THE COURT: I will, nevertheless, allow Mr. Reichler to proceed on the basis of his proffer to me.

MR. REICHLER: Thank you.

BY MR. REICHLER:

Q Same question. Looking at this document, can you tell me what it appears to be to you?

A It appears to be a printout of Loudon County Mutual Insurance Company.

Q And if you would please be kind enough to turn to the fourth page of this document?

A Yes, sir.

Q And the second paragraph on that page.

THE COURT: What page is --

MR. REICHLER: This is the fourth page.

THE COURT: There is some blank pages.

MR. REICHLER: Yes, counting the blank page, Your Honor. The reason they are blank is because sometimes the web page prints out longer than the size of the paper that it's printed on. The fourth page.

THE COURT: All right.

BY MR. REICHLER:

Q Would you read the second page there.

A Paragraph?

Q The second paragraph. I'm sorry. Thank you.

A That's all right. For almost 100 years, the company did well writing just fire insurance. By the late forties, it needed to do more to compete with other companies. So it extended its coverage to other perils. Over the years, it added additional lines of business. Now homeowner's insurance makes up most of its business.

Q Is that a true statement, do you know?

A I don't know.

Q So you -- it might be true? It's possible that this is true?

A It's possible that it's true.

Q And it's possible that it was true in 2002 --

MR. GARNER: I'm going to object to the form. It has been asked and answered. The witness testified he didn't now.

THE COURT: Yes. I don't think "possible" meets the mark, Mr. Reichler.

MR. REICHLER: Your Honor, at the very least, what

it shows is when the witness requested permission to broker, he didn't even know that these other lines of business, these other companies were offering.

THE COURT: What he testified is that they didn't write anything, expect fire.

BY MR. REICHLER: And now -- I am asking -- and then he said that this statement might be true, and I'm asking him might it have been true --

THE COURT: I'm sustaining the objection.

MR. REICHLER: Thank you.

BY MR. REICHLER:

Q Would you turn two pages after that.

A The sixth page?

Q Yes.

A Yes, sir.

Q The bottom heading where it says, "personal umbrella coverage.

A Yes, sir.

Q Would you read that?

A Loudon's Mutual personal umbrella program offers higher limits of liability and broader coverages that extend beyond the limits of our homeowner's, farm owner's, and personal automobile programs. Limits are available for one million or two million per occurrence.

Q Were you aware in 2002 whether Loudon Mutual offered a personal umbrella coverage?

A No, sir, I was not.

Q Do you know -- is it your testimony that they did not offer that coverage, or is it your testimony that you are not certain?

THE COURT: He said he didn't know; he didn't know then.

THE WITNESS: I did not know then.

BY MR. REICHLER:

Q There's a reference here this broader coverage that extend beyond the limits of our homeowners, farm owners and personal automobile programs.

Do you see that language?

A Yes, sir.

Q Do you know whether in 2002 Loudon County Mutual or Loudon Mutual offered insurance for personal automobile programs?

A No, sir, I do not.

Q Loudon County is --

MR. REICHLER: I'm done with these exhibits.

THE COURT: Very well.

BY MR. REICHLER:

Q The exhibit that has been marked today, P-92 --

A Yes, sir.

Q -- which you identified when Mr. Garner was questioning you as -- at least the bottom portion is your written request to State Farm to broker business; is that correct?

A Yes, sir.

Q After Mr. Thompson, read the three lines, please.

A I am writing to you in compliance with my AA3 contract, Section 1, Part G. I am requesting your written permission to place fire insurance with the company other than State Farm. I would appreciate your written response within 2 weeks so that I might plan ahead.

Q Now, this doesn't say that your request to broker fire insurance business for other insurers is limited to either Northern Neck or Loudon County, does it?

A No, sir, it does not.

Q Nor does it say that your request to broker business was limited to companies that were not direct multiline companies of State Farm, correct?

A That is correct.

Q If State Farm had written back to you just with a simple, yes -- Dear, Mr. Mueller, yes -- granting you the permission that you had requested in your e-mail, then you would have been free to place fire insurance with any company other than State Farm based on the terms of your letter, correct?

A Yes, sir.

Q And you received a written response from State Farm on the very same day, correct?

A Yes.

Q And that written response is also a part of Exhibit 92, correct?

A Yes, sir.

Q In your state, State Farm temporarily stopped the sell of fire insurance in August 2002, correct?

A I believe that's the date.

Q But by December 2002, State Farm resumed selling fire insurance in Virginia, and agents were again permitted to produce new fire insurance business, correct?

A That's correct.

Q So State Farm stopped selling fire insurance in Virginia, in your area, for only four months?

A That's correct.

Q And at the time you submitted your written request to broker, only two months remained before you were, in fact, authorized to State Farm to resume writing new fire insurance business for State Farm?

A That's correct.

Q And you agree, don't you, that if you had sold a customer a for fire insurance policy for either Northern Neck or Loudon County during this two-month period and that customer decided to remain with Northern Neck or Loudon County after State Farm resumed selling fire insurance, then State Farm would have lost a good long-term client?

A As their insurance agent, I would have been moving business back to State Farm. It would only make sense. The client receives a lesser premium on both their auto and their fire, and it counts towards my retirement. So to have it stay with a company other than State Farm would be unwise.

Q I believe the question called for a yes or no answer. I'm perfectly happy to have the witness give an explanation.

Do we take that as a no, and I will move on?

THE COURT: Well, ask him.

BY MR. GARNER:

Q That did call for a yes or no answer. Your explanation are already in the record. So that's is no.

A No.

Q Would you turn, please. To your deposition at page 97, please.

A I don't know which one is my deposition up here, sir.

MR. MARTIN: I believe there should be a book of all of Plaintiff's depositions on the table, Mr. Mueller, including yours.

THE WITNESS: This one. Defendant's submission of deposition transcripts?

MR. MARTIN: Yes, exactly.

THE COURT: What page?

MR. REICHLER: 97, your Honor.

BY MR. REICHLER:

Q Let me know when are you there, Mr. Mueller.

A Yes, sir, I'm there.

Q The procedure we have been following, Mr. Mueller. Is that I will let you know what the lines are, and then I will read the questions where it says "Q", and you read the

answers, if you don't mind.

A Uh-huh.

Q I'm going to start at line 20 on page 97 and we can continue reading responsively to the next page, page 98 at line 4.

Are you with me?

A Yes, sir.

Q Okay.

THE COURT: 98, line?

MR. REICHLER: It ends at 98 line 4? I'm starting at 97 line 7.

THE COURT: Yes. Continue.

BY MR. REICHLER:

"Q What if the policyholders with Loudon County and Northern Neck decide, despite your entreaties to them, we don't want to switch to State Farm, we want to stay where we are. What happens then?

"A Then State Farm would have lost a good long-term client.

Q Now, it was your intent to switch the customer out of Northern Neck or out of Loudon County and into State Farm as soon as State Farm resumed selling fire insurance, correct?

A That's correct.

Q And you would have been able to do that because your policyholders do what you tell them?

A For the most part. Not always.

Q Let's look at your deposition again.

A Sir.

Q Let's look at page 151 line 1, please.

A Yes, sir.

Q If you feel it's appropriate, I will let you read from the long -- anywhere from the long answer that you gave, but it's a very long answer. So I'm going to focus your attention just on a part of it. I don't mean to prejudice you here. So I would like you to look at page --

THE COURT: I would like to know, Mr. Reichler, whether it's worth the investment of time to do this when the witness has said that it's possible that he probably would have been able to switch them, but he's not certain. They might not have switched.

Now, in the deposition, assuming hypothetically that he said that they always listen to me, is it worth this investment of time?

MR. REICHLER: I think the answer to that question, Your Honor. Is no, and I will move on.

THE COURT: Let's proceed.

BY MR. REICHLER:

Q Mr. Mueller, probably -- as far as you are concerned, probably your policyholders don't even know which company is insuring them.

A In many cases that is true. As I stated in my deposition, I get phone calls from people who think I'm

their fire insurance agent, and I'm not.

Q So your policyholders are confused about who their insurer is?

A About who the insurance company is, not about who their agent is.

Q But my question is, they are confused about who their insurer is?

A On occasion.

Q And it has been your experience that the insurance-buying public has absolutely no idea what they are purchasing?

A I would say probably 95 percent of them have very little to no idea what they are purchasing.

Q So, therefore, if you broker business for one company, say Northern Neck or Loudon County or anybody else, and the next year you tell the policyholder it's time we go back with State Farm, it's a done deal, and State Farm benefits?

A I would say 95 percent of the time, yes, sir.

Q If you sell an insurance policy to Northern Neck or Loudon County or any other insurer other than State Farm, do you thereby create a fiduciary obligation to that company?

A Yes.

Q So when you take the customer back away from Northern Neck or Loudon County and place them with State Farm, because it's in your interest to do so to increase

your retirement income, does that create any strains on your fiduciary obligation to Northern Neck or Loudon County?

A I would have to ask you what you consider the definition of fiduciary responsibility towards the other insurance company.

THE COURT: Well, the question called for you to answer that question in the light of your understanding of a fiduciary responsibility.

THE WITNESS: Yes, sir.

I'm sorry.

BY MR. REICHLER:

Q Would you like for me to repeat the question?

A Yes, sir, because I don't understand the term that are you using.

Q I asked in the case that you sold the policy -- and you said you had.

A At that point, my fiduciary responsibility has to do with premiums collected and premiums dispursed. Okay. That was my understanding of the fiduciary responsibility at that point in time.

Q So you don't own any duty of loyalty, for instance, to Northern Neck or Loudon County if you sell one of their policies to a policyholder?

A No, sir. My duty is to my policyholder.

Q And your policyholder, 95 percent of the time, does what you tell them?

A Yes, sir.

Q Because they don't really understand --

THE COURT: This is repetitious, Mr. Reichler.

BY MR. REICHLER:

Q And is there a potential conflict of interest between your duty of loyalty to your policyholder and your desire to maximize your retirement income by telling that policyholder -- who most of the time listens to you -- that you got to come back to State Farm?

A Not for me, sir.

Q You never considered becoming an independent agent yourself, did you?

THE COURT: Mr. Reichler, this is strained far from the issues that are germane.

BY MR. REICHLER:

Q State Farm does not do business through any independent agents, does it?

A Not that I know of, sir.

Q The only agents that State Farm does business through are its own exclusive agents, correct?

A Up until the event of the internet, that was true.

Q Over the internet, does State Farm do business through agents who are not exclusive State Farm agents?

A Not through agents no, sir. They do business themselves.

Q So State Farm, does not, at any time, do any business through agents other than it's own independent

agents, correct?

A That's correct.

Q Thank you.

THE COURT: Mr. Mueller?

THE WITNESS: Sir.

THE COURT: Excuse me, sir. I meant to address
Mr. Garner.

Is there redirect?

I beg your pardon.

MR. GARNER: Thank you, Your Honor.

Earlier I had meant to move in evidence
Plaintiff's exhibit 92, which are the e-mails, but I
neglected to do so, and I would like to do that at this
time.

THE COURT: Is there an objection?

MR. REICHLER: I'm sorry?

THE COURT: 92.

MR. REICHLER: No, we have no objection.

THE COURT: Admitted.

(Plaintiff's Exhibit Number 92 was admitted
into evidence.)

MR. GARNER: Just a couple of items, Mr. Mueller.

REDIRECT EXAMINATION

BY MR. GARNER:

Q When you had your discussion, your telephone call
with Mr. Whitney --

A Yes, sir.

Q -- did you mention Loudon County Mutual or Northern Neck?

MR. REICHLER: That has been asked and answered.

THE COURT: Yes, but I was going to ask the witness about this, because I thought that the -- his communication with State Farm was not brought out in a chronological order. And I don't know whether the conversation -- when the conversation mentioning Loudon and Northern Neck occurred.

Do you follow me, Mr. Garner?

MR. GARNER: I do, Your Honor.

THE COURT: Did the -- did it occur before or after Plaintiff's 92?

PLAINTIFF: Perhaps I should ask the witness if he can give us the chronology.

STPHAO: That would be helpful.

MR. GARNER: Just to establish it.

BY MR. GARNER:

Q Mr. Mueller, was your first communication with State Farm with respect to your request to broker the e-mail to Mr. Thompson, that appears on the lower portion of Exhibit 92 -- Plaintiff's Exhibit 92?

A It was.

Q Okay. And then what was the next step in that process, either by telephone or e-mail? What was the next communication of any kind that you had with State Farm on the subject of brokering?

A The communication was a phone call from Mr. Whitney.

THE COURT: Was that on the same day?

THE WITNESS: If it wasn't the same day, it was the very next day, Your Honor.

THE COURT: Well, the --

THE WITNESS: I'm not --

THE COURT: Wait a moment, sir.

The responsive e-mail from Whitney is dated the same day as your e-mail. Your e-mail was at 1201, and Mr. Whitney was at 3:19 p.m. So the question is: Did your conversation -- your oral conversation, take place between the e-mails, or after Mr. Whitney's response?

THE WITNESS: Between the e-mails, sir.

BY MR. GARNER:

Q Okay. In that conversation that you had with Mr. Whitney between the e-mails, did you mention Loudon County Mutual or Northern Neck?

A I believe I did, sir.

Q And what was the next step after that?

A After the --

Q After that --

A -- verbal conversation?

Q Yes.

THE COURT: Well, tell us what took place during the verbal conversation.

THE WITNESS: I asked Mr. Whitney if he was

speaking with the full authority of the company to grant my request or deny my request. He said he was. I then asked him if I could broker with companies such as Loudon County Mutual or the Northern Neck. Because in the conversation, because they were so small, they were regional. And they were not truly a competitor of State Farm.

And I wanted to know if I could do that. And he said I would never be able to broker with any company. State Farm would not -- no one at State Farm would ever give me permission to broker.

BY MR. GARNER:

Q What was the next communication after that conversation?

MR. REICHLER: This has been asked and answered, Your Honor, on direct. It's the same question.

THE COURT: Overruled.

THE WITNESS: The next communication was another e-mail to Mr. Whitney after his response on this exhibit 92, talking about --

THE COURT: Wait a moment. The next communication was Mr. Whitney's e-mail?

THE WITNESS: No. My e-mail to Mr. Whitney. I'm sorry, Your Honor.

BY MR. GARNER:

Q Okay. Mr. Mueller, you sent an e-mail to Mr. Thompson. You had a conversation with Mr. --

A Whitney.

Q -- with Mr. Whitney.

I think you testified earlier that that conversation took place between the two e-mails that you see here?

A That is correct.

Q Okay. Maybe I wasn't clear.

When did -- there's an e-mail from Mr. Whitney that has a time stamp of 3:19.

A Yes, sir.

Q When did that come?

A On October 24th.

Q Was that the next communication after your conversation with Mr. Whitney?

A Yes, sir.

Q Okay.

THE COURT: Now, what was the next communication after that e-mail?

A I sent another e-mail to Mr. Whitney, which appears as a note in my deposition, saying that --

MR. REICHLER: Objection, Your Honor. Now this is hearsay. If he's going to talk about the contents of a document that there's no evidence that it was received. There's no document before the Court.

If he's going --

THE COURT: It has nothing to do with hearsay.

MR. REICHLER: Well, it's best evidence as well. He's talking about a --

THE COURT: Well, do you have your note?

THE WITNESS: It's in my deposition. He says he can't -- he couldn't locate the e-mail.

MR. REICHLER: Okay. I withdraw the objection.

THE COURT: Your note was made an exhibit in the --

THE WITNESS: Yes, sir.

THE COURT: -- in the deposition?

MR. GARNER: It was an exhibit to the deposition. I don't have copies of it, but I will be happy to provide it to the witness at this time, if the Court so desires.

MR. REICHLER: We would object to that, Your Honor. Past recollection recorded that the -- it is not -- and it is a hearsay document.

He can -- if he wants to testify about what he -- what he wrote we'll withdraw our objection. But we object to the document.

THE WITNESS: I wrote --

THE COURT: Wait a minute, sir.

THE WITNESS: I'm sorry, sir.

THE COURT: Technically, Mr. Garner, I think the objection is well taken.

He has a recollection. It's not as though he needs it -- that he doesn't have a recollection. But he remembers that the document was correct when he wrote it. That's past recollection recorded. He has a recollection.

MR. GARNER: And my question for him would be: What did you write to Mr. Whitney?

MR. REICHLER: Objection, Your Honor.

THE COURT: Well, you can't have it both ways, Mr. Reichler.

MR. REICHLER: I'll withdraw this objection.

MR. GARNER: And you don't have the e-mail.

What did you write to --

THE COURT: What did he --

MR. GARNER: -- Mr. Whitney?

THE WITNESS: I wrote to Mr. Whitney that he must have misheard me; that the words Allstate and Nationwide never passed my lips in our conversation. And that was the end of that e-mail, as I remember it.

MR. REICHLER: I'll withdraw the objection. Well, I did withdraw my objection to the testimony, so.

BY MR. GARNER:

Q And Mr. Mueller, were there any further communications with anyone from State Farm, with respect to your request for brokering?

A No, sir.

Q Are there companies other than Loudon County Mutual or Northern Neck, that would be suitable for you to broker the products of -- at a time -- and when I say, "suitable," not competitors of State Farm?

THE COURT: What does that have to do with the issues before me? He presented a -- a request for consent. And then there was a follow-up conversation. And he mentioned two companies. The fact that there may have been

three others out there has nothing to do with what State Farm replied to. They replied to a particular request.

MR. GARNER: I'll withdraw the request -- the question.

BY MR. GARNER:

Q Mr. Mueller, in October of 2002 when State Farm was not selling fire insurance in Virginia, had State Farm told you that it was going to resume that sale in December of 2002?

A No, sir, they did not.

Q When did you become aware that they were going to resume the sale of fire insurance in Virginia?

A I believe I received an e-mail in my office stating that we could once again write fire insurance, but my recollection of that is misty. I'm sorry.

Q So you -- was it at or about the time that -- that you, in fact, were able to do it?

A Yes, sir. It was -- at that time, it was like an announcement, you can now write fire insurance again.

Q Okay. So as of October, it was an indefinite suspension, as far as you were aware?

A As far as I was aware.

MR. REICHLER: That's leading, Your Honor.

THE COURT: Yes, it is. Let's get on with it.

MR. GARNER: I'll withdraw it.

I don't have anything further at this time.

THE COURT: I have no questions of the witness.

Mr. Reichler, I'll look forward to the evidence connecting up the Defendant's 80 and 81, to 2002. Otherwise, as I say, I will strike those exhibits.

MR. REICHLER: Yes, Your Honor. As I said, I will make my best effort to do that.

THE COURT: Thank you.

Thank you, Mr. Mueller. You are excused.

We will take the mid-afternoon recess and resume at 3:45.

MR. GARNER: Thank you, Your Honor.

(Whereupon a recess was taken from 3:31 p.m. to 3:47 p.m.)

THE COURT: Mr. Garner?

MR. GARNER: We have no further witnesses.

THE COURT: Mr. Reichler, the Defendant's case?

MR. REICHLER: Thank you, Your Honor.

We have two witnesses, Your Honor. Our first witness is an impeachment witness whose name is Bill Whitney, and we would like to call him at this time.

With the Court's permission, Mr. Martin, my colleague, will conduct the direct examination.

THE COURT: Very well.

MR. GARNER: Your Honor, before the witness takes the stand, I would ask the Court's permission that Mr. Mueller, whose testimony is going to be impeached, be able to hear the testimony of Mr. Whitney.

MR. REICHLER: I leave that question to Your Honor

to decide whether that's proper or not, and it's up to Your Honor the propriety on that. We will respect Your Honor's judgment.

THE COURT: It being no objection, let Mr. Mueller be present.

* * * * *

Thereupon,

WILLIAM WHITNEY,

having been called as a witness for and on behalf of the Plaintiff and having been first duly sworn by the Deputy Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q Good afternoon, Mr. Whitney.

A Good afternoon.

Q Please state your full name for the record.

A William Ray Whitney.

Q Are you currently employed?

A I am.

Q By whom?

A By State Farm Insurance.

THE COURT: Keep your voice up, sir.

THE WITNESS: Yes, I will, sir.

BY MR. MARTIN:

Q Perhaps you might lean into the mike a little bit.

It picks you up a little better that way.

How long have you been employed by State Farm?

A Twenty-five years.

Q And what's your current position?

A I'm currently vice president of agency.

Q And are you responsibility for a particular geographic region?

A Yes. I have responsibility for our agency operations in the State of Virginia.

Q How long have you been in that position?

A Since 1997.

Q What are your primary responsibilities as vice president agency?

A I oversee our agency operations in the state and work very closely with our agency field offices and our agents.

Q Mr. Whitney, are you familiar with an agent named Clifford Mueller?

A Yes, I know Clifford.

Q Do you recall receiving a copy of an October 24, 2002, e-mail that Mr. Mueller sent to Doug Thompson, asking for permission to write insurance for other carriers?

A I do remember seeing that e-mail.

MR. MARTIN: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. MARTIN:

Q Mr. Whitney, I have given you a document that has been identified as Plaintiff's Exhibit 92. It's an e-mail

exchange, actually. Would you look down at the bottom half of that and tell me is that the e-mail that you received from Mr. Mueller?

A Yes, this is the e-mail I received.

Q What happened after you received a copy of that e-mail?

A As agency vice president over Virginia, I was contacted by Doug Thompson to address this issue, handle it for him, and to contact Cliff Mueller and address any concerns that he had.

Q Remind me again who Mr. Thompson was?

A He was, at the time, the senior vice president for the zone.

Q But he is now retired?

A Yes, he is.

Q After you received Mr. Thompson's request to follow up with Mr. Mueller, what did you do?

A I contacted Blair Hall at our agency executive office, back at our Corporate Headquarters in Bloomington, and Blair serves as a liaison or a contact for us to advise us on policies and administrative procedures as it relate to agency issue in the company.

Q Okay. And what happened in that conversation with Mr. Hall?

A I discussed this issue of Mr. Mueller's request to broker business and called him to get the verification as to whether we had changed our position as a company on

allowing agents to broker business. And Blair Hall indicated that we had not changed our position.

Q Okay. And did you then contact Mr. Mueller?

A Yes, I did.

Q How?

A I telephoned him.

Q Do you remember when you placed that phone call?

A Yes. I called him the same day that I received his e-mail.

Q And what do you remember about that conversation?

A Well, I remember it was a very short conversation. I identified myself as the vice president agency over Virginia, he knew that, and was responding because of that position to his inquiry and wanted to discuss any concerns that he might have.

Q During that conversation, did Mr. Mueller mention Loudon County Mutual or Northern Neck insurance companies?

A No, he did not.

Q How can you be so sure with that?

A I'm completely unfamiliar with Loudon County Mutual or Northern Neck Insurance. And if he mentioned those companies, because of my unfamiliarity, I would have questioned him further and inquired more.

Q Do you recall --

THE COURT: You were familiar with those companies?

THE WITNESS: I was not, sir.

THE COURT: Oh, you were not?

MR. MARTIN: No.

BY MR. MARTIN:

Q So, that I'm clear, Mr. Whitney, are you stating --

A I had never heard of either of those companies, and had I -- because of that unfamiliarity, if he would have mentioned those companies, I would have questioned him further about those companies and inquired more.

Q Do you recall the names of any companies that he did mention?

A I remember in the conversation that there was a casual reference to Allstate and Nationwide as typical competitors, but nothing beyond that.

Q Do you remember if he said it or you said it, it being Allstate or Nationwide?

A I don't remember who specifically mentioned the reference, just that there was a reference as a typical competitor.

Q Was anything else said in the conversation?

A Not that I can recall. It was very short.

Q But you denied Mr. Mueller's request; is that right?

THE COURT: That's leading, sir.

BY MR. MARTIN:

Q Did you deny Mr. Mueller's request?

A I did deny his request.

THE COURT: That's also leading, but less so than the first question.

MR. MARTIN: I will try again, Your Honor.

THE COURT: I think you have already done it. Let's proceed.

MR. MARTIN: Very well. Absolutely, Your Honor.

BY MR. MARTIN:

Q What was your basis for denying Mr. Mueller's request, Mr. Whitney?

A My basis for denying his request, was that it was not in our mutual best interest to grant the request.

Q Did you say that you would never grant a request for permission to broker?

A No, I would not say never. There may be an occasion where we might grant that request.

Q At the time State Farm -- well, was State Farm making new fire policies available in Virginia?

A At that time we were not writing new fire policies for new customers, but we were accommodating the existing policyholders?

Q So what was the basis of your denial if State Farm was not then operating -- offering fire insurance in Virginia?

MR. GARNER: Object. It has been asked and answered. He said it was not in their mutual best interest.

THE COURT: Yes. He may ask him whether he said

anything more, but he did say that.

BY MR. MARTIN:

Q Well, in addition to what you testified so far, Mr. Whitney, were there any other factors that informed your decision to deny Mr. Mueller's request?

A Yes. In fact, these were competitors against State Farm insurance and we were still --

THE COURT: Who was competitors?

THE WITNESS: Can you repeat the question, please?

BY MR. MARTIN:

Q In addition to what you have already testified, were there any additional factors that informed your decision to deny Mr. Mueller's request --

THE COURT: That you mentioned to Mr. Mueller besides it was not in the interest of State Farm?

MR. MARTIN: Your Honor, my question is a slightly separate question. I'm happy to clarify.

THE COURT: Would you, please.

MR. MARTIN: I'm inquiring at this point about Mr. Whitney's own thinking, as it were. And so I'm asking him what factors informed his decision to deny Mr. Mueller's brokering request beyond anything that you stated already in the record.

THE WITNESS: Uh-huh. The basis of my answer was that competition is competition, and that it would not make good business sense for State Farm to assist a competitor

to write firearm insurance using our own agents whereby that would increase the market share of that competitor, increase their customer base and their revenues, which could then possibly be used against us in a competitive position that might adversely impact our own future success.

BY MR. MARTIN:

Q But at the time State Farm wasn't making new policies available, you testified; is that correct?

A That's correct.

Q Then how could a company that was be a competitor of State Farm?

A We are still in the fire insurance business at that time, we still are today and we intended to remain so. So we were under temporary restrictions with every intentions of lifting those restrictions as quickly as possible, and at no time were those restrictions intended to be permanent.

Q Do you remember when restrictions on the submission of new business went into effect in Virginia?

A Yes. They went into effect August 9, 2002.

Q When were they lifted?

A They were lifted December 20, 2002.

Q Did you receive any additional communications from Mr. Mueller after you wrote him your e-mail denying his request to write business for other insurers?

A No, I did not.

Q Did you receive any telephone calls from him?

A No, sir.

Q Did you receive any e-mails from Mr. Mueller?

A None whatsoever.

Q Did you receive any correspondences of any kind from Mr. Mueller?

A Not after that initial phone call, sir.

Q Did you receive anything from him altering or limiting the terms of his e-mailed written request from October 24, 2002?

A No, I received nothing from him.

Q Let me ask you this, Mr. Whitney: If you understood Mr. Mueller to be asking to write business for Loudon County Mutual or Northern Neck, would your response have been any different?

A No, it would not have been any different at all.

Q Why not?

A Because the fact that regardless of who the competitor is, they are still competitors and it doesn't matter whether they are a large competitor or a small company, they are still competitors. And it doesn't make sense for us to assist a competitor to write business using our agents.

MR. MARTIN: I have nothing further, Your Honor.

THE COURT: Mr. Garner?

CROSS-EXAMINATION

BY MR. GARNER:

Q Competition is competition, isn't it, Mr. Whitney?

A I believe so.

Q Any insurance company that offers any line of insurance that is the same as State Farm is a competitor; is that right?

A I believe so.

Q And, therefore, State Farm, as you understand its policies, would not permit the brokering of insurance with any company that offered any line of insurance that was also a line offered by State Farm; is that correct?

A I'm not certain if I completely understand your question. We do have alliances with some companies.

Q Mr. Whitney, the rules here are if it calls for a yes or no answer, you have to give a yes or no first.

THE COURT: And then you can explain.

Do you remember the question?

THE WITNESS: Could you repeat the question, please.

BY MR. GARNER:

Q The question is that State Farm would not allow brokering of the products of any company -- of a line products of any company where State Farm also offered that line?

A I don't believe that's true.

Q You don't believe that's true. What exceptions exist in the policy of State Farm?

A I'm not familiar with all of the exceptions.

Q So you can't say?

A I can say I don't believe that that is true.

Q Isn't it true that in this case you would have denied the request of Mr. Mueller to broker the products of Northern Neck and Loudon County even though you never heard of them?

A I denied -- I denied the request of broker --

Q Mr. Whitney, please answer the question.

A Ask the question again, please.

MR. REICHLER: Your Honor, can just the witness be advised again that he should answer yes or no, but he does have a right to offer an explanation.

THE COURT: I did tell him that.

BY MR. GARNER:

Q The question is you testified on direct that if Mr. Mueller had made a request for Loudon County or Northern Neck that you would have denied it. And the reason you said you would have denied is because competition is competition. Do you remember that testimony?

A I do, sir.

Q And you would have denied his request for Northern Neck or Loudon County Mutual even though those were two companies that you had never heard of?

A Yes, I would have.

Q So it really wouldn't matter what company

Mr. Mueller was asking to broker with, would it?

A It would not have mattered during that conversation, yes.

Q Now, you testified that you had --

A Could I further explain that answer?

THE COURT: Yes.

THE WITNESS: My answer would have been based on the conversation that I had with Blair Hall, our director of agency at Corporate, confirming that we had not changed our position allowing agents to broker to the company.

THE COURT: May I ask, what was State Farm's position at that time?

THE WITNESS: The position, as I understood it, was that it is not in the best interest to allow our agents to broker business for competitors unless granted by the company specifically.

THE COURT: Unless granted by the company specifically?

THE WITNESS: Unless approved by the company, yes, sir.

BY MR. GARNER:

Q Well, you testified to a conversation that you had with Blair Hall in the executive -- you testified that you had a conversation. Can you tell us please, Mr. Whitney, in that conversation, what you did say -- and is it Mr. Hall?

A Yes.

Q What did you say and what did Mr. Hall say?

A I inquired as to whether our position regarding brokering business by an agent had changed at all, and his response was it had not.

THE COURT: Did you articulate the position to Mr. Hall so he would know what you understood the position to be?

THE WITNESS: I advised Mr. Hall that I had an inquiry from an agent that wanted to broker fire insurance business in the State of Virginia, and had our position changed from what I understood it to be. And he answered that it had not; we are not authorizing agents to broker business without competing companies.

Q Okay. Did I hear you say that the position of the company was you were not allowing broke -- allowing brokering with outside firms?

THE COURT: That are in competition.

BY MR. GARNER:

Q In competition. And competition is any company that offers a line of insurance that State Farm offers regardless of the size of that competitor and regardless of whether State Farm is offering that in a particular jurisdiction at a particular time?

A I don't believe that's the definition.

Q Do you know what the definition was of competition in 2002?

A I believe I had a very good understanding of that

definition.

Q And what was your understanding of competition at that time?

A It was my understanding that we were not approving agents to broker business with firms that were in direct competition of any product that we offered at State Farm.

Q Can you throw any further light on what you mean by direct competition?

A If a firm was not affiliated with State Farm insurance and an agent wanted to broker business with that firm, we would deem that to be a competing firm and we would resist allowing an agent to broker business with that competing firearm.

MR. REICHLER: Thank you. Nothing further.

THE COURT: Wait a moment, sir. It's not that easy.

Redirect.

REDIRECT EXAMINATION

BY MR. MARTIN:

Q Mr. Whitney, at the time you received Mr. Mueller's email request that's reflected in Plaintiff's Exhibit 29, did you understand that he was asking permission to broker fire business?

A I believe I did, yes.

Q If you need to, Mr. Mueller, feel free to look at it to refresh your recollection.

A Yes. I was aware that it was fire insurance.

Q Did you understand his request to be limited in any way among companies offering fire insurance?

A No.

Q Would it have made any difference if he had requested permission?

MR. GARNER: Objection. Leading.

MR. MARTIN: Strike that, Your Honor.

BY MR. MARTIN:

Q Did you consider any company offering fire insurance at the time to be in competition with State Farm?

A Yes.

MR. REICHLER: Thank you, Mr. Whitney.

MR. GARNER: Nothing further, Your Honor.

THE COURT: Mr. Whitney, when you spoke to Mr. Mueller, did you know at that time that State Farm was planning to come back in a couple of months with selling fire insurance?

THE WITNESS: Our intentions were to began writing.

THE COURT: My question was, did you know. If you would kindly answer yes or no, and then explain.

THE WITNESS: No.

May I explain, sir?

THE COURT: Yes, sir.

THE WITNESS: Our intentions were to begin writing fire insurance as quickly as we possibly could, and reports

were provided to us to evaluate our position in the marketplace and to provide us business information to make those decisions. And in October, the trends were very favorable and it was much dialogue among the executive office that we would move back into the marketplace as quickly as possible as the trends continued favorably and that we would be back in the marketplace as early as the end of the year.

THE COURT: Thank you, sir. You are excused.

MR. GARNER: Thank you, Your Honor.

Mr. Reichler?

MR. REICHLER: Thank you. Your Honor.

Your Honor, we have one more witness on the subject of brokering, and it is Mr. Gregory Fisher.

THE COURT: You are under the same oath we administered to you previously, Mr. Fisher.

THE WITNESS: Yes, sir.

* * * * *

Thereupon,

GREGORY FISHER,

having been previously called as a witness for and on behalf of the Defendants and having been previously duly sworn by the Deputy Clerk, was examined and testified as follows:

MR. REICHLER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. REICHLER:

Q Good afternoon, Mr. Fisher.

A Good morning.

Q Does State Farm have a policy with respect to whether its agents may broker, solicit or write business for other insurance companies?

A Yes, it does.

Q What is that policy?

A The policy is outlined in that -- only in accordance with our agreeing to allow agents to broker, in certain limited circumstances are they permitted. Generally it's not permitted.

Q How long --

THE COURT: What was the question?

MR. REICHLER: The question is --

THE COURT: I don't know whether the gentleman answered the question.

BY MR. REICHLER:

Q Does State Farm have a policy with respect to whether its agents may broker --

THE COURT: He answered that question.

BY MR. REICHLER:

Q And what is that policy?

A They are not permitted to broker, generally.

Q How long has that policy been in effect?

A Since 1954.

Q What are the company's reasons for not permitting its agents to broker, solicit, or write business for other

insurance companies?

A Generally, we have reasons surrounding -- I'll give you the list. Exclusivity is one. Our business model has been, since 1954, that we have exclusive agents. We have an enormous investment in our agents in terms of their training, their recruitment, their selection, their retention, what they know. We prefer not to create any unnecessary confusion among our policyholders. We don't want to have unnecessary reputational risk. We don't want to have divided loyalties among our customers.

THE COURT: I didn't understand what you said before divided loyalties, sir.

THE WITNESS: Reputational risk. We do not want any un --

THE COURT: What does that mean?

THE WITNESS: Any -- by having our agents have divided loyalties and working with other companies, perhaps, where something can go wrong in the marketplace and have customers mistakenly relying on State Farm when the problem may have arisen with our agents brokering with another company.

And as I mentioned, divided loyalties. And, of course, probably one of the cornerstones, one of the most important factors is we are very, very interested in maintaining and protecting our trade secrets.

Q Let me take these reasons one at a time with you, Mr. Fisher. Why is it so important to State Farm's

business model that its agents be exclusive agents?

A Well, we have built our best model. We have built our reputation and success on having exclusive agents. It served us very, very well. It has made us the leader in the marketplace. So the exclusivity is the very foundations of our arrangement with our agent.

Q You said also that there was -- another factor, was the investment State Farm makes in selecting, training, and maintaining its agent is a factor in this policy. Can you explain that?

A Yes, I can. We are very, very proud of the way we select and train and work with our agents. We are proud that our agents stay with us longer than any other company's agents. We have made an enormous investment in this process. We don't feel it would be wise to share that investment or the returns to that investment with companies who have not made the investment along with us. We want to protect our own interest that way.

Q Can you give us an approximation, if you can, of what the investment is in dollar terms that State Farm makes in selecting training and maintaining it's agents?

A Yes, I can. It was -- the last report I saw was -- it was in the area of about \$360,000 put on a new agent. It took us roughly nine years to break even when you consider all the factors that go into the return of an investment. Many of these agents also go into management and serves in other ways besides being agents, of course.

So we are proud of it. We take pains to do it well. We think we do it better than anyone else.

Q In what way would it cause -- might it cause customer confusion if agents were allowed to broker business for other insurance companies?

A Well, if a customer went into an agent's office and when the agent was permitted, perhaps, to broker business, the customer may not know who the other insurance company was; would not know about the claim service that the other company would provide nor would we; would not know if their agent was acting as a broker or as an agent, fiduciary relationship, as we heard earlier. It would be up for grabs, so to speak. The customer is not sophisticated, necessarily, to understand nuances.

But when a problem occurs, which occur under these situations, who is the agent representing? Are they representing the company? Are they representing the customer? Are they representing the brokering company? What is the relationship of the parties?

Q How could the brokering of business for other insurance companies by State Farm agents lead to divided loyalties on the part of the agents?

A Well, I will give you an obvious example. At claim time, for example, suppose one of the policyholders in the agent's office that was -- the policy was brokered, would have a claim and would have a claim with a State Farm agent, a State Farm policy in the same office. How is that

handle? Where is the loyalty? Where is the fiduciary responsibility there?

What would happen in terms of a catastrophe, for example, an earthquake, a hurricane? Well, one set of customers get a certain type of claim service, and we don't even know what the other claims service would be available. What does the agent do in that situation?

There are all kinds of example; billing examples, transitional examples, advertising examples, marketing examples.

Q You mentioned that another factor or basis for this policy, the no-brokering policy, is trade secret protection. Let me ask you first, what trade secrets are you talking about?

A The trade secrets that State Farm takes pain to protect, maintain and use as a basis of our business. It is the very fabric of our business, not only now, but particularly in the future.

Q And what trade secrets are those?

A These are names, addresses, expiration dates, information about our policyholders as a group.

Q And why is that so important to you?

A Because that's the basis for having built this business and continues to run the business and provide in the future for future agents. It is the very soul of our business.

Q How would it help competitors to have this

business?

A There isn't a competitor out there who wouldn't like to have the names, addresses, policyholder information, coverage information, price information, claims information, about our policyholders. They could market to them much more easily than they can now. They could cherry pick us, if you will.

We take pride in our customers, and we take pains, believe me, to protect the trade secrets.

Q And how would the allowing agents to broker business for other insurers jeopardize these trade secrets?

A Well, in many cases, they would be giving information about our customers, our policyholders and their families and other, to the competition.

Q Is State Farm's policy of not allowing agents to broker business for other insurance companies set forth in writing?

A Yes, sir.

Q Where is that?

A In the agents agreements.

Q In the agent agreements?

A Yes, sir.

Q Anywhere besides the agents agreement?

A Well, yes. It's set forth in -- any of our agent's request permission to broker, and we give them reasons whether we are going to allow them to broker or

not.

Q Would you please take a look at exhibit -- if you can find the Plaintiff's exhibit book. I think it's the one with the black cover, Exhibit P-45.

THE COURT: Is this the nature of refreshing the witness' recollection, Mr. Reichler?

MR. REICHLER: These exhibits are in evidence and I wanted to ask him -- the witness had just testified that the policy is reflected in letters that was sent --

THE COURT: I understand. I asked you a simple question.

MR. REICHLER: Not to refresh his recollection, but to --

THE COURT: To lead him?

MR. REICHLER: No, not that either, Your Honor.

THE COURT: Well, if he's going to look at the document and he is going to know what you are talking about.

MR. REICHLER: Well, I'm going to ask him to point out, if he can, where in these documents it reflects the policy and the reasons for the policy are reflected. I don't think that it is leading. But if it is, I'll --

THE COURT: I'm not going to interrupt you from now on, but I want to warn you that I will make an appropriate discount in judging credibility when leading questions are posed to the witness. They don't have the same currency in my mind as answers given to questions that

are not leading.

MR. REICHLER: Your Honor, I appreciate that and thank you for letting me know, but I didn't realize that I was asking a leading question. But if Your Honor believe it, I'm happy to withdraw it.

THE COURT: No. I want you to proceed as you wish, but I want you to bear in mind how I assess testimony when it's brought out by leading.

MR. REICHLER: Thank you, Your Honor.

THE COURT: Continue. Exhibit 40?

MR. REICHLER: P-45.

THE COURT: Yes.

BY MR. REICHLER:

Q What are these documents? Can you identify the documents?

A I can identify the one I'm looing at first. It looks like a letter from agency field executive, John Lelange (sp) in Burbank, California, to Paul Bush, agency vice president, in which he is enclosing a copy of request for limiting brokering by Allan Shaw. So I'm assuming he's an agent, carbon copied Kathy Pressler (sp), who's another executive.

Q Can you turn the page to the -- can you identify the next document, the next page in Exhibit P-45?

A Yes. This appears to be a letter to Patricia Adkins, an agent in Pleasanton, California saying, I'm not sure -- may I turn the page?

Q Yes.

A From Paul Bush, the gentleman who we spoke of earlier, to Ms. Adkins, and responding to her letter to Mr. Bush, I believe, on April 9, 2003.

Q Does it say anything about brokering?

A I believe it does, yes.

Q What does it say about brokering?

A The letter starts off by thanking her for understanding and cooperation of year -- as you know, the agents agreement -- points out in the agents agreement, Section 1G, the policy on brokering, and says while the agents agreement requires State Farm agents to turn away business since it does not fit the needs or abilities of the company, it allows State Farm to invest heavily in its agency marketing system in ways, impossible or impractical, under a non-exclusive agency system that significantly benefits the agents.

From time to time -- you want me to continue?

Q Well, my question simply is going to be, does the letter reflect accurately what you considered the basis for State Farm's policy of denying brokering?

A Yes, it does.

Q How so?

A Well, it points out our policy and the contract language. It points out a procedure we went through, and it tells her that -- it tells Ms. Adkins that we have considered her request in light of the facts and come to

the conclusion that in the overall best interest of the company, we have to decline to give our consent.

Q And where does it say the basis for the policy, if at all?

A In the agents agreement.

Q And is this letter in any way -- I'll withdraw the question.

Are there any exceptions to State Farm's policy of not allowing agents to broker business for other insurance companies?

A Yes, there are.

Q In what circumstances might there be an exception to the no-brokering policy?

A In a circumstance in which we are not in a market, a product market, we have no plans to enter it or re-enter it, and we don't feel like we are competing with the company that is in that market.

Q Can you give any specific examples?

A Yes.

Q Please do.

A One is Baldwin Mutual. Baldwin Mutual is a company in Alabama. There is no FAIR plan in Alabama, as I understand it. FAIR is an acronym for FAIR Access to Insurance Regulation. They typically -- a FAIR plan will either writer high-end or high-risk business, particularly fire business, and there is not one in Alabama.

So in order to give our agents access to that market,

which we are not interested in, we have allowed them to broker over a long period of time with Baldwin.

Q Does State Farm sell that kind of insurance in Alabama?

A No. Additionally, we have an arrangement with a insurer -- an arrangement that we allow our agents to broker certain line of business in Maine, Maine Employee Employers Mutual Insurance Company. It's an insurance company that is involved primarily in worker's compensation insurance, certain types of it, for which we have no interest. So for awhile, anyway, we allowed our agents to broker that business.

Q Does State Farm sell any worker's compensation insurance in Maine?

A Not that kind, no.

THE COURT: You know, we had a stipulation, Mr. Reichler, when the companies -- the instances where State Farm permits brokering.

MR. REICHLER: Yes, and I will move on.

BY MR. REICHLER:

Q What about -- are there any circumstances in which State Farm would permit its agents to broker business for companies like Allstate or Nationwide?

A Not that I know of, no.

Q And why not?

A Because they are competitors and we don't want, for the reasons outlined earlier, our agents or ourselves

in a situation where we are dealing with competitors in any way.

Q What about a smaller insurance company that operates, say, in a single state or that sells only a single line of insurance like, for example, fire insurance?

A No. That would not make a difference. I would suggest that at one time State Farm was a small insurance company only in one state, selling only one product. And now I would suggest that that company has grown up to be serious competitor for most people.

Q Why doesn't the size of the other insurance companies or the fact that it's only sells one type of insurance make a difference?

A Well, because generally we sell policies one at a time. And for every one that our competitors get is one that we won't have a chance to compete for potentially. It's not the size. It's the fact that we would be their competitors in the marketplace.

MR. REICHLER: Excuse me just a moment.

BY MR. REICHLER:

Q Mr. Fisher, you heard Mr. Mueller testify that he wanted to broker fire insurance business for two small Virginia-based companies, Northern Neck and Loudon County. Would brokering business for Northern Neck or Loudon County have been permissible under any exception to State Farm's no-brokering policy if, in fact, he had made such a request?

A None that I can think of.

Q Why not?

A Because they are competitors. They are in a market that we want to be. We were only temporarily out of the market, and we expected to be in it, and we didn't want to give those companies our trade secrets, our business, the line to other products, perhaps.

Q Was State Farm's decision, denying Mr. Mueller's brokering request, consistent or inconsistent with the company's established policy on brokering?

A Absolutely consistent.

Q Apart from the exceptions you have mentioned, Baldwin Mutual and the Maine Company --

A Uh-huh.

Q -- are there any other exceptions to State Farm's no-brokering policy?

A There are a few individual agent exceptions, yes.

Q And how many are there?

A I can think of three.

Q And what are the circumstances in those cases?

THE COURT: Are these separate from the stipulation?

MR. REICHLER: Yes, Your Honor.

THE WITNESS: There is an older agent in York who came to us in 1962. His name is Harry King. He brought with him a policy, too, from Yorktown Company. I think that's the name of it, Yorktown. He had some kind of a

ranch policy. Not a farm ranch like we have in certain states, but a ranch insurance policy, and we allowed him to keep that policy, or write a few, perhaps, over the years. Every year we renew his agreement to do that.

Q Does State Farm sell that kind of policy?

A No, sir. We have two agents I can think of in Texas, a Mr. Fruenberg (sp) and a Mr. Phelps, who have certain arrangements with school districts, a business that we're not interested in being in. And from time to time, they do business with these school districts, either as a broker-type arrangement or advisor-type arrangement.

Q Does State Farm sell those types of policies?

A No, sir, not there.

Q Are there any other circumstances in which State Farm allows agents to write business for product provided by other insurance companies?

A Yes, there are.

Q In what circumstances?

A From time to time, we allow ourselves -- we have alliances, if you will, with certain other companies. We enter agreements with them. We do extensive research. We have legal restraints. We have requests for proposals, and we decide whether or not we want to -- for a certain period of time outlined by the contract -- to go into an allied business arrangement with them.

Q And with whom or which companies does State Farm have such alliances?

A Presently for certain life insurance products, is Phoenix Home Life. For certain health products is Assurant, formally Fortis, now Assurant Company, and with Aon for certain high-end liability policies, director and that type of thing.

Q Does State Farm itself sell the kind of policies that AON sells?

A No.

Q Does State Farm itself sell the kinds of policies that Fortis Insurance sells?

A No.

Q Does State Farm sell the same kind of policies that Phoenix Life sells?

A Generally, no.

Q Why does State Farm allow agents to write business for these specific companies?

A Would you like me to take them one at a time or kind of give you a blanket?

Q Let's start with the blanket.

A Because -- in many cases, because our agents have asked for products like this. In some cases we have not been able to get to market with some of the products. In some cases, we have been in the market and don't want to be in the market any longer.

For example, in health insurance business, we have a book of business that is deteriorating. It's a hospital surgical plan. We are losing money, more money each year

with it. We are not going to abandon those people, those policyholders, even though it's the that type of book of business that has gone bad because we had a lot of unhealthy people that we are insuring. Yet some of our agents feel that they have customers who may need a hospital plan. So we have an alliance with, then, the company called Fortis, and now it's called Assurant. They have a couple other specially-type health products.

For Aon, it's the type of commercial liability that we're not interested in doing. Some of our agents, especially in certain cities requested we consider that. We accommodated them.

In the case of Phoenix. Phoenix actually approached us at a time when some of our agents were asking for a more competitive product with certain features at the high-end. We looked at it; we recognized that we didn't have those types of products; we wanted to have them. We were unable to obtain the system's support, the system's hour. It would have taken us too long to get the market ourselves because of priorities. So we have allied with Phoenix, for example.

THE COURT: Mr. Fisher, am I understanding you correctly that with regard to these three companies in which you have alliances, since State Farm has no interest in the product that they are selling, State Farm presumably would consent to brokering even though you didn't have an alliance with those companies since you are not interested

in those lines?

THE WITNESS: I don't think so, Your Honor. Because that would prohibit us from creating the kind of agreement that we ultimately got with these companies. It's not a brokering agreement. It's an alliance agreement in which we have all kind of built-in safeguards for us. They are not for unlimited periods of time. And, in fact, in the case of Phoenix, we actually look at other companies who are doing this kind of product and decided which one might be best. But we don't have necessarily a brokering relationship with them; we have an alliance, if you will.

Q Is there a procedure at State Farm by which an agent who wants to submit a request to broker for another company may submit such a request?

A Yes, there is.

Q What's the procedure?

A Well, the procedure is we ask the agent to approach his or her local management or zone, his regional management, put the request in writing and we will consider it.

Q In the year 2000 State Farm imposed certain limitations on the number of new auto and new fire insurance policies agents could produce in certain states; is that correct?

A That's correct.

MR. REICHLER: It's foundational, Your Honor.

THE COURT: I understand.

MR. REICHLER: I am very sensitive.

BY MR. REICHLER:

Q Did I say 2000? I meant 2002. Is the year 2002 that the limitations were put in effect?

A I believe generally they were 2002 and some in -- 2002, and there are some restrictions in 2003 and a few less in 2004, I believe.

Q During the period that limitations from were effect, did State Farm permit agents to broker auto or fire insurance business for other insurance companies?

A No, we did not.

Q And why not?

A Well, because we considered the reasons why we had limitations in the first place. Some of those limitations had to do with loss cycle. Some of those limitations had to exposure. We had too much exposure in certain places. Some of these considerations had to do with regulatory issues. And as we look at those, we thought that over time we would be back in the business, hopefully, sooner rather than later in all those situations, and that has proven to be the case.

Q Mr. Mueller testified that he would have been willing to bring back to State Farm any customer whom he placed with another insurance company if he had been allowed to broker for that company, specifically. And I quote his testimony, "So I broker with one company and the next year say it's time that we should go back with State

Farm, it is a done deal, and State Farm benefits."

That's from his deposition, page 152, line 21 to 152 like 4. And it is a deposition excerpt that has been admitted into the case.

THE COURT: Very well.

BY MR. REICHLER:

Q Would that have been acceptable to State Farm?

A Well, it depends. First of all, you said "bring back." I don't know whether those are his words or yours, Mr. Reichler, but I believe he was looking to bring in business rather than have his State Farm business go to these companies, if I'm not mistaken.

Had he been a broker for other companies, he would have had a different kind of relationship with his customers and his company. There is no assurance we would have taken those people back if, in fact, they were back. They could have had accidents. They could have had claims.

Whether or not all of our agents could lead their customers through that kind of a transition is debatable. It just seems to me that the customer would be even more confused. And I think, if I heard Mr. Mueller's testimony, then they were already.

Q Did State Farm receive a written request for Mr. Swift in 2002 requesting permission to broker?

A I think they did, yes. I think we did, yes. I didn't receive it.

Q Are you aware that one was received?

A Yes. I would have to refresh my memory on that date. I don't have a date on the document. I don't have it in front of me, do I?

Q It is Exhibit D-79 -- Defendant's 79, but it was put into evidence today. So I'm not sure it's in the exhibit book.

MR. REICHLER: But with the Court's permission, Mr. Martin would be glad to furnish you a copy.

THE COURT: Defendant's 70?

MR. GARNER: It's Defendant's 79, Your Honor. I don't know that it is in the notebook because -- the binder because it was offered today. This was the document --

THE COURT: Yes, it was, and I recall it, and I thought I slipped it into my exhibit book.

MR. REICHLER: May I proceed, Your Honor?

THE COURT: Mistakenly, I put it in the Plaintiff's.

Yes, please.

MR. REICHLER: Thank you, Your Honor.

BY MR. REICHLER:

Q You are aware of this request by Mr. Swift?

A Yes, I'm aware of it.

Q And are you aware of State Farm's response?

A Yes.

Q What was State Farm's response?

A That we were going to deny this request.

Q And why did State Farm deny Mr. Swift's request?

A Well, generally, it would have been denied because Mr. Swift was asking to broker for all agents. Mr. Swift can speak for Mr. Swift, I suppose, but there are some agents he cannot speak for. He was asking to write business for all companies. And by having all our agents broker with all companies, that's absolutely antithetical to our business model.

Q And why is that?

A Because we have exclusive arrangements with our agents?

THE COURT: He has already answered that, sir.

BY MR. REICHLER:

Q Does State Farm ever sell insurance through agents other than State Farm's own exclusive agents?

A No.

MR. REICHLER: No further questions, Your Honor.

THE COURT: Mr. Garner.

CROSS-EXAMINATION

BY MR. GARNER:

Q State Farm's policy with respect to brokering is that it's not permitted generally; is that right?

A Yes.

Q The instances in which it allows brokering are when State Farm is not in a particular product market; it has no plans to enter or re-enter that product market and State Farm doesn't feel that its competing with the other company. Are those the factors?

A Yes.

Q So those are the factors that it considers when evaluating whether to broker or not; is that correct?

A Among others, yes.

Q And those others would be whether it enters into an agreement or it does legal research and looks into the ramifications of brokering with that particular company?

A When I mentioned among others, I was thinking more about other factors we would also consider that you didn't mention.

Q And those -- but let me make sure I understand your testimony. Regardless of factors that are considered -- there may be many factors that are considered, the only instances in which it is actually done are when there are those three conditions met when State Farm is not in the product market, has no plans to enter or re-enter that market, and it doesn't feel that it is competing with that company. Am I correct?

A Generally, yes. But you said only. There could be other, I suppose, but I would agree with you so far, yes.

Q Let me direct your attention to Plaintiff's Exhibit 45?

THE COURT: What number is that?

MR. GARNER: 45, Plaintiff's, 45 Your Honor.

BY MR. GARNER:

Q And I'll ask you to turn to the second page, which

is a letter to a Patricia Adkins, agent, from a Paul Bush.
Is that somebody at State Farm, Mr. Bush?

A It was at the time, yes. He is retired.

Q Do you understand this to be a State Farm response
to an agent's request to broker?

A Yes, that's what it appears to be. Yes, sir.

Q Where are the three factors that you enumerated
not in a product market, no plans to enter, and doesn't
feel competing, articulated in this response to an agent's
request to broker?

A Those three are not listed. I think what he
had --

Q That's the answer. They not there, are they?

A Those three factors? No.

Q Right. Let's turn a couple pages forward to a
letter to Franklin Dutto, agent -- I'm sorry. That's
doesn't seem to be complete and I apologize. Go one more
to a letter to Terry McManus from a Michael Hargis, agency
vice president. Those three factors don't appear here, do
they?

A Those factors -- no. The factors I was talking
about when I said among others, certainly do on page 2.

Q But the three factors --

A Your three factors, no.

Q The three factors that are the ones that control
whether there is brokering or not aren't listed. Whether
it's a product market that the company is in, there is --

whether there are plans to enter or re-enter the market and whether State Farm feels its competing, it's not in that letter?

A From Mr. Hargis to Mr. McManus? I don't know what Mr. McManus was asking for. So when I interpret his reasons on page 2, it's hard for me to understand what he is referring to.

Q Okay. And you understand that the -- it was a request to broker, though?

A Broker what?

Q Something.

A I assume it was, yes.

Q And I will ask you the same question with respect to the last letter there, a letter to a Jimmy Moore.

A Yes.

Q From a Michael Madlock. And do those three factors appear there in that letter that is asking to respond to an e-mail requesting permission to place business which is not qualified for accommodation with State Farm?

A You are asking me the same question?

Q Yes.

A Yes. I don't know what Mr. Moore, in this case, was asking for. Mr. Madlock is responding that it was not granted.

Q And he hasn't listed those factors?

A Well, I don't know what the factors that it

applies to, sir, but he hasn't, no.

MR. GARNER: Nothing further.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. REICHLER:

Let's take a look at P-45, which I'm doing only because of the cross. I believe -- let's take a look at the letter in P-45 to Patricia Adkins.

A All right.

Q Is there anything in here that identifies factors that State Farm considered in deciding whether to grant or deny a brokering request?

A Yes, sir.

Q Can you show us where those are?

A The last paragraph on the first page of the letter says, in deciding whether to grant his consent, State Farm considers the following factors, and then it enumerated them.

Q Could you just read them quickly?

A The general market situation, the potential for conflicts of interest, the possibility of customer confusion, the potential for claim handling complications, the potential liability of State Farm in the event that the other insurers fails to perform the client's satisfaction, the difficulty in protecting trade secrets, the protection of State Farm's brand, the value of -- and training and support provided to the agent and staff, the long-term

potential of the market, the long-term potential to the market, the line of business through State Farm or partnered company, and the potential for strained agent loyalty.

Q Just read the next paragraph.

A We have considered your request in light of these factors and have come to the conclusion that it is in the overall best interest of the companies and the agency force as a whole to decline to give you our consent.

Q In the interest of saving time, can you take a look at the other two letters about which Mr. Garner questioned you, a letter from State Farm to a Mr. Terry McManus and a letter from State Farm to a Mr. Jimmy Moore. And tell us if those, first of all -- if those letters identify factors that were considered in the determining whether to grant or deny a brokering request?

A All right. In the case of Mr. McManus, agent McManus, I believe on page 2, first paragraph, it again lists those factors.

Q I don't want you to read them. Just identify where they are.

That's page 2, first paragraph, of the letter to Mr. McManus.

A The letter to Mr. Moore, two-page letter. It's the last paragraph that continues on the second page. It list all the factors.

Q When you say last paragraph, you mean last

paragraph of the first page?

A Yes, last paragraph, yes. It goes to the second page.

MR. REICHLER: I have no further questions, Your Honor?

THE COURT: Thank you, Mr. Fisher.

MR. GARNER: Nothing further.

THE COURT: You are excused.

Anything further?

MR. REICHLER: We have no further witness on the subject of brokering, Your Honor.

THE COURT: Mr. Garner.

MR. GARNER: We have no rebuttal witnesses, and I'm not sure of the timing on this, but I had understood that Mr. Reichler was being to undertake to put in some kind of testimony about those two printouts on his part of this portion.

THE COURT: I have given him until tomorrow to do that. If he doesn't have it tomorrow, I'll entertain the motion to strike.

MR. GARNER: Very well. Your Honor. Thank you.

THE COURT: That closes the testimony subject to the matter that we discussed on consent to brokering.

And what's our next subject matter?

MR. GARNER: The next subject matter, Your Honor, is restrictions on sales.

THE COURT: All right.

How many witnesses do you have?

MR. GARNER: We have one witness on that.

THE COURT: And Mr. Reichler?

MR. REICHLER: We have two witnesses, Your Honor.

Just for the Court's convenience, I think it would be -- it's very likely that we should be able to, in the next two days, complete all of the testimony, if we are -- assuming we start tomorrow.

THE COURT: Well, the Court also believes in affording incentives to expedited litigation, and therefore will adjourn five minutes ahead of our usual time.

(Proceedings adjourned at 4:55 p.m.)

CERTIFICATE OF REPORTER

I, MARGARY F. ROGERS, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported by machine

shorthand, in my official capacity, the proceedings had and testimony adduced, upon the Bench Trial in the case of

NATIONAL ASSOCIATION OF STATE FARM AGENTS, INC.,
v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.,

Civil Action No. 02ca004089 in said Court on the 27th day of July, 2005.

I further certify that the foregoing 117 pages constitute the official transcript of said proceedings, as taken from said shorthand notes, my computer realtime display, together with the audio sync and tape recording of said proceedings.

In witness whereof, I have hereto subscribed my name, this 28th day of July, 2005.

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