

1

2 THE COURT: We are now on the Internet?

3 MR. GARNER: That's correct.

4 THE COURT: Bear with me a moment. (Pause.)

5 Mr. Garner.

6 MR. GARNER: Thank you, Your Honor. Plaintiff

7 calls Steven Knapp.

8 THE DEPUTY CLERK: Mr. Knapp, you are still under

9 oath, sir. Please be seated.

10 THE WITNESS: Thank you.

11 Thereupon,

12 STEVEN KNAPP,

13 having been recalled as a witness on behalf of the

14 Plaintiff, and having been previously sworn, was examined

15 and testified, as follows:

16 THE COURT: Proceed, Mr. Garner.

17 MR. GARNER: Thank you, Your Honor.

18

19 DIRECT EXAMINATION

20 BY MR. GARNER:

21 Q. Mr. Knapp, during the time you've been an agent up

22 until the last few years, did State Farm ever compete with

23 you?

24 A. No, sir.

25 Q. What was the role of the agent, if any?

1 A. The role of State Farm agent has always been to
2 market the products of State Farm exclusively.

3 Q. Did there come a time when State Farm competed
4 with you?

5 A. Yes, sir.

6 Q. And what did it do?

7 THE COURT: When was that?

8 THE WITNESS: Would be in the last few years.

9 BY MR. GARNER:

10 Q. And how did it do that?

11 A. State Farm started selling products over the
12 Internet and through some other alternate access points.

13 MR. GARNER: Your Honor, we have a stipulation in
14 the joint pretrial statement that stipulates as to the
15 current availability of products from State Farm over the
16 Internet, both in terms of what the products are and where
17 they are offered.

18 THE COURT: Would you cite the place where I can
19 locate the stipulation?

20 MR. GARNER: That is the joint pretrial statement
21 that was -- it's dated July 15th, 2005, and I don't think
22 we need it right now. I simply wanted to reference it.

23 THE COURT: Where do I find it in the joint
24 pretrial statement?

25 MR. GARNER: Oh, I'm sorry, Your Honor. It is on

1 the second --

2 THE COURT: Page and the paragraph number.

3 MR. GARNER: It is paragraphs 3 through 8.

4 THE COURT: On page?

5 MR. GARNER: Pages 2 and 3 of the supplemental
6 joint pretrial statement. And that --

7 THE COURT: Wait a moment, sir.

8 (Brief pause.)

9 All right. Thank you, Mr. Garner.

10 MR. GARNER: You're welcome, Your Honor. And I'll
11 just note for the record that Plaintiff's Exhibits 85
12 through 90 are State Farm documents. They are maps and
13 lists that show what State Farm is currently selling over
14 the Internet, and I think that information is reflected in
15 the stipulation.

16 Mr. Knapp, if State Farm sells a policy to one of
17 your existing policyholders over the Internet, do you get a
18 commission?

19 A. Yes, sir, I do.

20 Q. And is that in the full amount?

21 A. Yes, it is.

22 Q. Now, if State Farm sells a policy over the
23 Internet to a new customer in your area, do you get a
24 commission?

25 A. Only if I'm a select agent.

1 Q. And are you a select agent?

2 A. I am currently not a select agent.

3 Q. Are select -- So, are select agents eligible for
4 commission from Internet business?

5 A. Yes, they are.

6 Q. And do you know what commission they receive?

7 A. If you are an AA 97 agent, you receive a first
8 commission of three percent and renewal commissions of seven
9 percent up to a period of ten years.

10 THE COURT: Wait a moment, sir. Isn't that in the
11 pretrial order?

12 MR. GARNER: It is a contention of the defendants
13 in the pretrial.

14 THE COURT: Wait a moment.

15 (Pause.)

16 I draw your attention to the pretrial order, pages
17 1 to 2 in section 2, beginning on commissions paid on
18 assigned policies involving new customers.

19 MR. GARNER: And I think that the witness
20 testified that the agent, if a select agent, is paid three
21 percent for the first year on auto and seven percent each
22 year thereafter.

23 THE COURT: If that's what the pretrial order
24 says.

25 MR. GARNER: And I'm saying the witness is

1 agreeing with that.

2 THE COURT: Is that correct, sir?

3 THE WITNESS: Yes, sir.

4 THE COURT: Continue.

5 BY MR. GARNER: And then --

6 Now, Mr. Knapp, could you take a look at Exhibit
7 -- the Plaintiff's Exhibit 63? And what is that?

8 THE COURT: Bear with me, please.

9 MR. GARNER: Sure.

10 (Pause)

11 THE COURT: What exhibit are you saying?

12 MR. GARNER: 63, plaintiff's.

13 THE COURT: Thank you.

14 BY MR. GARNER:

15 Q. And what is that, Mr. Knapp?

16 A. This is an official amendment to the contract of
17 agents, called the alternate access point memorandum of
18 agreement, and before any agent would be allowed to receive
19 any assignments of any type of business from the Internet or
20 from other alternate access points, they would have to first
21 agree to sign this amendment to their current agent
22 agreement.

23 Q. And do you consider State Farm's sale of policies
24 over the Internet to be a violation of your agents
25 agreement?

1 A. Yes, sir, I do.

2 Q. And why is that?

3 A. I think my agreement gives me the sole right to
4 market State Farm products, and it also attaches to it a
5 very specific commission that I will receive when those
6 products are marketed.

7 Q. Okay. Now, are you aware of any plans that State
8 Farm has with respect to future Internet sales?

9 A. Yes, sir, I am.

10 Q. Would you look at Plaintiff's Exhibit 57? And
11 what is that?

12 A. This was an announcement that agents received in
13 the Illinois region on June 7, 2005, which indicates plans
14 for State Farm to test the sale of life insurance products
15 directly over the Internet.

16 Q. And is there anything new or different about this
17 proposal?

18 A. The third paragraph has the last line of the third
19 paragraph which indicates to me a departure from past
20 practice.

21 Q. And what --

22 THE COURT: What paragraph is that?

23 THE WITNESS: The third paragraph down, Your
24 Honor, the last line, beginning with the sentence "This
25 test."

1 BY MR. GARNER:

2 Q. Would you read that sentence, please?

3 A. "This test will be supported with a targeted
4 marketing plan aimed at driving customers to the Internet."

5 Q. And in what respect is this a departure from past
6 practices?

7 A. This indicates to me, by the words "targeting
8 marketing plan" that State Farm intends to probably send
9 direct mail letters to the existing customers of current
10 State Farm agents.

11 MR. REICHLER: Objection, Your Honor. He is
12 speculating now.

13 THE COURT: He is testifying to how he understood.
14 The objection is overruled.

15 MR. REICHLER: I assume --

16 THE COURT: Bear with me for a moment, please.

17 MR. REICHLER: Yes, sir.

18 (Pause)

19 THE COURT: Continue.

20 A. If I may further explain? The words "targeting
21 marketing plan" does mean something to State Farm agents.
22 We received information from the home office frequently
23 referring to the target marketing lists of various kinds, so
24 the words "targeting marketing plan" does mean something to
25 us, and that would indicate to me that the company intends

1 to contact my customers directly and encourage them to
2 purchase products directly from the Internet.

3 Q. Now, does State Farm allow you to have your own
4 website that you can sell insurance over?

5 A. No, sir. We are strictly prohibited from having
6 our own websites.

7 MR. GARNER: Nothing further.

8 THE COURT: Mr. Reichler.

9 MR. REICHLER: Your Honor, my cross-examination
10 -- I will do as the Court pleases. My cross-examination
11 will run substantially beyond 12 o'clock, which I notice is
12 10 minutes away.

13 THE COURT: We won't adjourn until 12:30. In any
14 event --

15 MR. REICHLER: Oh, fine.

16 THE COURT: Please commence.

17 MR. REICHLER: Thank you.

18

19 CROSS-EXAMINATION

20 BY MR. REICHLER:

21 Q. Let's start -- First of all, good morning,
22 Mr. Knapp.

23 A. Good morning, Mr. Reichler.

24 Q. Let's start where you left off with Mr. Garner,
25 with Plaintiff's Exhibit 57, Plaintiff's 57.

1 A. Yes, sir.

2 Q. All right. You still have that in front of you?

3 A. I do, sir.

4 MR. REICHLER: May I proceed, Your Honor?

5 THE COURT: Yes.

6 MR. REICHLER: Okay.

7 I would just like you to take a look at this

8 document, and would you read the second paragraph of that

9 document?

10 A. Early findings from State Farm's CRG customer

11 study have told us customers needs are changing, and we must

12 adapt to be competent in the future. Our learnings have

13 shown us customers will still value the relationship they

14 have with companies they choose, but the nature of those

15 relationships is changing. To better serve today's

16 consumers and drive more business to our agents, we need to

17 make it as easy and convenient as possible for customers to

18 access State Farm products and services.

19 Q. So that there are two purposes set forth here.

20 One is to better serve today's consumer; correct?

21 A. Correct.

22 Q. And the other is to drive more business to our

23 agents; correct? That's what it says?

24 A. Yes, sir.

25 Q. Do you have any objection to that - driving more

1 business to the agents?

2 A. That's always been the practice in the past of
3 State Farm, up until recently, to always drive more business
4 to agents.

5 Q. So, that means you have no objection to the
6 objectives set forth in this document; correct?

7 A. I have no objection for any --

8 (Court reporter interrupts.)

9 I'm sorry. I have no business to any effort on
10 the part of State Farm to drive business directly to agents.

11 THE COURT: You have no objection?

12 THE WITNESS: No, absolutely no objection. I wish
13 they would do more of it.

14 THE COURT: Yes. I don't think you said
15 objection. At least I didn't hear it.

16 THE WITNESS: Oh, I'm sorry. I meant to say I
17 have no objection to State Farm driving business to agents.

18 BY MR. REICHLER:

19 Q. Now, let's look at the next paragraph.

20 A. Yes, sir.

21 Q. Would you read that?

22 A. "This test --"

23 Q. Let's do it -- I'm sorry, I didn't mean to
24 interrupt, but let's do it sentence by sentence, if you
25 don't mind.

1 A. That's fine. "This test is part of our
2 company-wide efforts to better meet changing customer needs,
3 bring more business to our agents and meet our growth goals.

4 Q. So that what the company wants to do here is bring
5 more business to the agents; correct?

6 A. If that's their intent, then that would be fine.

7 Q. That's what it says here, doesn't it?

8 A. That's what it says.

9 Q. Now, let's continue reading the paragraph sentence
10 by sentence.

11 A. It would be about learning more about our
12 customers with respect to select term life insurance and the
13 Internet access point.

14 Q. You have no problem with that, do you?

15 A. Not so far.

16 Q. Let's read the next two sentences together.

17 A. During the test, we will give Illinois customers
18 the opportunity to apply or select term life insurance
19 through StateFarm.com. As part of the process, the customer
20 must select an agent to assist with policy issuance and
21 servicing.

22 Q. So, as part of the process or the test that is
23 being conducted, the customer must select an agent to do
24 business with; correct?

25 A. If it is a brand new customer, they must select a

1 select agent.

2 Q. Well, we'll get to that, but that wasn't in answer
3 to my question. As part of the process, the customer must
4 select an agent to do business with; correct?

5 A. That's correct.

6 THE COURT: Well, he is entitled to state how he
7 understands this language.

8 MR. REICHLER: Yes, but I -- it called for a yes
9 or no answer, and he didn't give a yes or no answer, which
10 is why I asked that. I am willing to let him explain all he
11 wants, but as with other witnesses, I expect him to answer
12 yes or no and then give an explanation.

13 Now, the word "select" in this sentence, you would
14 agree, is a verb, it's not an adjective; correct?

15 A. That's correct.

16 Q. So this document doesn't say anything about select
17 agents, where select is an adjective, does it? Not in this
18 document; correct?

19 A. I'm not sure I understand your question.

20 Q. Well, when it uses "select" here, that means the
21 customer must choose an agent to do business with? That's
22 what it says here; correct?

23 A. Customers choose an agent; that's correct.

24 Q. And it doesn't say anything in this document that
25 the customer must choose a select agent, capital S, capital

1 A? Not in this document, does it?

2 A. Yes, that's correct. If I am allowed to explain
3 that?

4 THE COURT: Yes, you may explain.

5 THE WITNESS: It does not say this in this
6 document, but I am fully aware of the AMD 66 document, which
7 show we discussed previously, which says that unless I sign
8 that AMD 66 document, I am not entitled to --

9 (Court reporter interrupts.)

10 I'm not entitled to any business from the
11 Internet.

12 THE COURT: You mentioned the document by number.
13 What document is that, sir?

14 MR. REICHLER: It's the one that Mr. Garner just
15 questioned him about, Your Honor. What number is it?

16 THE COURT: Is that the -- announcement document?

17 MR. GARNER: 63.

18 MR. REICHLER: Yes. That's exactly right.

19 THE WITNESS: Yes, sir.

20 BY MR. REICHLER:

21 Q. Now, you chose not to sign the AMD 66 agreement;
22 correct?

23 A. I am fairly certain about that, but they were
24 offered a long time ago, and I hate for you to produce a
25 document that said that I did because I don't think that I

1 did.

2 Q. I don't have a document that you did.

3 A. And I'll --

4 Q. Let's be clear about this. No tricks here.

5 THE COURT: Wait a moment. The reporter can only
6 take one voice at a time.

7 MR. REICHLER: Correct.

8 THE COURT: Now, Mr. Knapp, you must wait until
9 Mr. Reichler completes his question.

10 THE WITNESS: Yes, sir. I apologize.

11 BY MR. REICHLER:

12 Q. You didn't sign the AMD 66 agreement, did you?

13 A. I don't believe I did.

14 Q. You chose not to do that?

15 A. That's correct.

16 Q. And any agent can sign the AMD 66 agreement. You
17 don't have to be a select agent to sign the AMD 66
18 agreement; correct?

19 A. That's correct, but I would like to explain that.

20 THE COURT: Yes, you may.

21 THE WITNESS: Any agent could be offered any
22 amendment to their agreement by the company at any time. At
23 any time that amendment is perceived by the agent to be to
24 their advantage, I would certainly expect them to sign it;
25 if they perceived it not to be to their advantage, I would

1 expect them not to sign that amendment.

2 Q. So you perceived this amendment not to be to your
3 advantage and chose not to sign it?

4 A. That is correct. And I can explain why I felt
5 that way.

6 Q. I haven't asked that. I just asked if that was
7 the case.

8 THE COURT: You may wait until redirect on that,
9 Mr. Knapp.

10 BY MR. REICHLER:

11 Q. And just to be clear, even though you are not a
12 select agent, had you chosen to sign the AMD 66 agreement,
13 you could have done so?

14 A. I could have, yes, sir.

15 Q. Are you aware --

16 THE COURT: I am confused now. I thought we had a
17 stipulation, and it's recited on page 1 of the supplemental
18 pretrial statement, stipulation on the select agent program,
19 and it says, unless -- it says that in the current
20 criteria, to become a select agent are, and 1D says licensed
21 or certified in all products and services or agree to refer
22 client to another licensed or certified State Farm agent.
23 And unless that is complied with, the current benefit listed
24 as 2B, and that reads eligibility to receive block
25 assignments and Internet leads concerning new customers.

1 So, Internet leads is prohibited to an agent who does not
2 agree, who is not a registered agent and who fails to agree
3 to refer clients to another licensed or certified State Farm
4 agent. Wouldn't that disqualify an agent from getting an
5 Internet lead, Mr. Reichler?

6 MR. REICHLER: No, Your Honor, and I'd be happy to
7 explain.

8 THE COURT: Yes, please.

9 MR. REICHLER: In fact, the witness has already
10 testified that if one of his own -- if one of his own
11 policyholders were to go on the Internet and to purchase
12 insurance from State Farm online, that that would be
13 assigned back to him by the company and he would get his
14 full commission.

15 THE COURT: Yes.

16 MR. REICHLER: There is a difference --

17 THE COURT: Between old and new.

18 MR. REICHLER: There is also a difference between
19 leads and assigned business. Leads involves a situation --
20 I don't want to be testifying, but I have to do this to
21 answer Your Honor's question.

22 THE COURT: Yes.

23 MR. REICHLER: There is a difference between a
24 lead, which a -- you will hear this in the testimony of our
25 witnesses, but a lead is when the customer goes to the

1 Internet, and on the Internet is channeled by State Farm on
2 the Internet to go through an agent rather than to buy the
3 insurance online. That's considered a lead. But if the
4 customer decides or prospective customer decides I don't
5 want to go through an agent, I'm going to pass by all of
6 these opportunities to go through an agent, I want to just
7 by online from State Farm, then State Farm will sell the
8 policy and immediately assign the business to an agent. And
9 that's what I'm getting at. And the agent must sign the AMD
10 66 agreement to qualify for that, and that's what I'm
11 establishing here, Your Honor. It's not related to leads.

12 THE COURT: You are saying, if I understand you
13 correctly, --

14 MR. REICHLER: Yes.

15 THE COURT: -- that while leads must go to a
16 select agent, an accomplished contract of a new customer may
17 go to an agent that is not a select agent?

18 MR. REICHLER: What I'm saying, Your Honor -- and
19 I really want to not testify here -- but what I'm saying is
20 that that situation is not covered by the stipulation, and
21 there hasn't been testimony on it yet.

22 THE COURT: Well, I'm having the colloquy now with
23 you on understanding --

24 MR. REICHLER: Yes.

25 THE COURT: -- the select agent program. Are you

1 saying that whereas leads cannot go to anyone but a select
2 agent, if a contract is signed on the Internet, that may go
3 to a non-select agent?

4 MR. REICHLER: Excuse me just one moment, Your
5 Honor.

6 THE COURT: Yes.

7 MR. REICHLER: May I consult, Your Honor?

8 THE COURT: Yes.

9 (Pause)

10 MR. REICHLER: Your Honor, I apologize.

11 THE COURT: That's all right.

12 MR. REICHLER: The rules vary on what type of
13 insurance is being offered.

14 THE COURT: And how is that so?

15 MR. REICHLER: Your Honor, in the case of life
16 insurance, there is no requirement that the agent be a
17 select agent. In the case of auto insurance, with respect
18 to a new customer who applies for - who purchases online
19 and does not choose a particular agent, who happens not to
20 be a select agent -- that is, if he doesn't specifically
21 choose an agent, who is not a select agent -- and the
22 company assigns the business, that new business will be
23 assigned to a select agent.

24 THE COURT: So with life insurance, there is no
25 requirement of a select agent?

1 MR. REICHLER: That's right.

2 THE COURT: In automobile, there is?

3 MR. REICHLER: In those circumstances, Your Honor,
4 yes.

5 THE COURT: And a new customer who signs --

6 MR. REICHLER: Yes.

7 THE COURT: -- on Internet.

8 MR. REICHLER: And a new customer who has gone
9 through the process, which will be described later for Your
10 Honor, if that customer is a new customer, purchases a
11 policy online, State Farm then assigns that business to an
12 agent who is a select agent.

13 THE COURT: Let's proceed.

14 BY MR. REICHLER:

15 Q. You said, Mr. Knapp, that State Farm has competed
16 with you?

17 A. Yes, sir.

18 Q. In fact, all of the agents in the area where you
19 operate, Belleville, Illinois, compete with you, don't they?

20 A. That is correct, sir.

21 Q. And if those agents compete with you for a
22 particular customer and they obtain that customer, they
23 don't assign it to you, do they?

24 A. No, sir. That is what's different about this
25 program.

1 Q. And they don't pay you any -- you don't earn any
2 commission if your competitor agent gets the customer that
3 you want and sells -- and solicits, writes the new business
4 for that new customer; correct?

5 A. That would be correct.

6 Q. Now, State Farm's largest competitors sell
7 insurance directly to customers over the Internet, don't
8 they?

9 A. I'm not aware of that.

10 Q. Do you know that they do or do you know that they
11 don't?

12 A. I wouldn't be in a position to testify what other
13 companies sell over the Internet or do not sell over the
14 Internet.

15 Q. So you don't know that Allstate, Nationwide,
16 GEICO, Progressive, American Family sell insurance over the
17 Internet?

18 A. I've never researched it.

19 Q. And you don't know whether they started, of
20 course, selling insurance over the Internet before State
21 Farm did?

22 (Court reporter interrupts.)

23 You don't know whether they started selling
24 insurance over the Internet before State Farm did?

25 A. I have never been particularly concerned about

1 what competing companies business practices are. They are
2 of no concern to me.

3 Q. Do you know what a house account is?

4 A. A house account?

5 Q. Yes.

6 A. In respect to State Farm?

7 Q. In respect to any insurance company.

8 A. I can perhaps tell you what I believe it to mean
9 with State Farm. I certainly couldn't testify what it means
10 much to any other insurance company.

11 Q. Just tell us what is a house account.

12 A. I am aware of only one limited incident of a house
13 account, and that would be if they -- We have in our auto
14 insurance situation provided an amendment to our contracts
15 that allow policies to be guaranteed renewable, which means
16 we cannot cancel them under any circumstances, so long as
17 the customer maintains a valid driver's license. Sometimes
18 customers in that range have substantial and severe losses,
19 and had that policy not been guaranteed renewal, we could
20 have gotten off the business, cancelled the customer. State
21 Farm says that any claim by any customer is attributed to a
22 loss record of the individual agent, and if losses become
23 excessively high, then we can lose bonuses because of that.
24 So, agents are provided with an option to assign an auto
25 policy, what we call a house account. That means the losses

1 are no longer charged to our record, but we have to still
2 continue to pay the expenses of servicing the policy, but we
3 don't get any commission.

4 Q. And that's an option that you are provided by
5 State Farm, you said?

6 A. That is an option.

7 Q. Other than that, State Farm doesn't have house
8 accounts?

9 A. Only one other situation. That would be in the
10 the case of when an agent retires and they are unable to
11 appoint a replacement right away, then the company services
12 those policies where the company employs a -- it would have
13 to be someone else to tell you whether that comes under the
14 definition of a house account or not.

15 Q. A house account, just to be clear, is an account
16 that the company maintains itself, rather than assigning to
17 an agent; is that right?

18 A. If you say so, I'll --

19 Q. Is that how you define it?

20 A. No. I just told you how I defined it.

21 Q. So in the situation that you just described, where
22 an agent retires and the company takes it over until such
23 time as that business is assigned to another agent, that's a
24 temporary situation; correct?

25 A. I'll allow you temporary if you agree that

1 temporary can be a long time.

2 Q. Well, it's until the company assigns it to another
3 agent; right?

4 A. That would be the end of the temporary, yes.

5 Q. Now, do you know if other insurance companies
6 maintain house accounts, --

7 MR. GARNER: Your Honor, --

8 Q. -- State Farm's competitors?

9 MR. GARNER: -- I think we are getting pretty far
10 afield of the scope of the direct.

11 THE COURT: I agree. Sustained.

12 BY MR. REICHLER:

13 Q. In State Farm's case, every single policy that is
14 sold over the Internet is assigned to a State Farm agent;
15 correct?

16 A. I couldn't be in a position to confirm that.

17 Q. You don't deny it either?

18 A. I have no knowledge one way or the other.

19 THE COURT: He says he doesn't have any knowledge.

20 MR. REICHLER: I just wanted to establish that.

21 Do you have any knowledge as to how many State
22 Farm agents have signed the AMD 66?

23 A. I would have no knowledge about that.

24 Q. Now, State Farm does provide you free of charge
25 with your own site on the Internet, doesn't it?

1 A. Well, yes, but I have to -- I think the Court may
2 want to understand that anyone can access State Farm through
3 StateFarm.com. In the past, I assume they will do it in the
4 future, there is a link usually on the first page of that
5 where it's called agent locator, and if one were to click on
6 that and you knew enough information about how to find an
7 agent, either by zip code or by last name or even by phone
8 number, you could locate a specific agent.

9 MR. REICHLER: May we mark an exhibit for
10 identification, Your Honor?

11 THE COURT: Yes.

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

14 THE DEPUTY CLERK: Defendant 84, Your Honor.

15 (Thereupon, Defendants' Exhibit No. 84

16 was marked for identification.)

17 THE COURT: This is my copy?

18 THE DEPUTY CLERK: Yes, sir.

19 BY MR. REICHLER:

20 Q. Mr. Knapp, can you identify this?

21 A. Yes. Based on the prior testimony of how to
22 access a particular agent, this would be what happens when
23 you accessed my office either by zip code, my area code or
24 by my name.

25 Q. So, this is the site on the Internet that State

1 Farm maintains for you at its expense; correct?

2 A. That's correct.

3 Q. I must congratulate you. You photograph very
4 well, Mr. Knapp.

5 A. It is a remarkable likeness.

6 (General laughter.)

7 MR. REICHLER: Well, I think we can stipulate. I
8 would be happy to do that.

9 Mr. Knapp, I think you testified that this --
10 someone can access your Internet site which State Farm
11 maintains for you through State Farm's website?

12 A. That's correct.

13 Q. Isn't it possible for a customer, a potential
14 customer or friend of yours or anyone else, to access this
15 site, this Steven Knapp internet site directly without going
16 through State Farm's website?

17 A. Not that I'm aware of.

18 Q. You are not aware that State Farm permits its
19 agents to obtain their own domain names?

20 A. I am under the impression that is strictly
21 prohibited.

22 THE COURT: What is a domain name, Mr. Knapp, --

23 THE WITNESS: A domain name?

24 THE COURT: -- if you know?

25 THE WITNESS: Your Honor, I'm going to have to

1 decline. I can't say with certainty what a domain name is.

2 MR. REICHLER: Would Your Honor like an
3 explanation or shall I move on?

4 THE COURT: For this purpose, I prefer a witness.

5 MR. REICHLER: Thank you, Your Honor. We will
6 provide one.

7 And you are not aware of any service redirection
8 that State Farm provides to its agents free of charge, so
9 that if they establish their own domain names on the
10 Internet, a customer or anyone can access the Steven Knapp
11 internet site maintained by State Farm without going through
12 State Farm at all?

13 MR. GARNER: I object to the form of the question.

14 THE COURT: Objection sustained.

15 MR. REICHLER: Do you know --

16 THE COURT: He doesn't know what a domain name is.

17 BY MR. REICHLER:

18 Q. Do you have any idea how much it has cost State
19 Farm to develop these internet sites for 17,000 agents?

20 A. I would have no idea.

21 Q. You are free to personalize and customize your
22 Internet site, aren't you?

23 A. I believe I am allowed to supply certain
24 biographical information, as long as it meets company
25 guidelines.

1 Q. But looks like you have chosen not to?

2 A. I thought at one time that I had. I may have not
3 updated it for a while and it may have dropped off, but I
4 think at one time that I had supplied that.

5 Q. Are you sure of that?

6 A. Am I sure that it's there or not?

7 Q. Well, that's the first question. It's not here,
8 is it?

9 A. Well, I thought I just said I thought that I had
10 supplied it at one time and that it may have dropped off
11 because I don't refresh it.

12 Q. But it's not here now?

13 A. It's not here.

14 MR. REICHLER: Can we -- May I mark another
15 exhibit for identification, please, Your Honor?

16 THE COURT: Yes.

17 (Thereupon, Defendants' Exhibit No. 85
18 was marked for identification.)

19 THE DEPUTY CLERK: Your Honor, this is Defendants'
20 85.

21 BY MR. REICHLER:

22 Q. Mr. Knapp, just want to point out very quickly on
23 this document. These are the Internet sites that State Farm
24 has developed and paid for for the other State Farm agents
25 in Belleville, Illinois?

1 MR. GARNER: Objection. Is Mr. Reichler going to
2 testify? I object to it.

3 THE COURT: Yes. Objection sustained.

4 MR. REICHLER: I'll move on.

5 Let's go back to the one that you identified as
6 your Internet site maintained by State Farm. Now, State
7 Farm has enabled your Internet site, so that if a customer
8 accesses or chooses to access or ended up at your Internet
9 site, they can actually get a rate quote on auto or other
10 insurance directly from your internet site; correct?

11 A. That would be correct.

12 Q. And that's true of each and every other one of
13 State Farm's 17,000 agents; correct?

14 A. I couldn't testify to that.

15 Q. And I assume you have no idea what it cost State
16 Farm to provide this facility for your Internet site;
17 correct?

18 A. I would have no idea.

19 Q. And in addition to this Internet site that you
20 have, State Farm allows you to have your own totally
21 independent website, independent of and unconnected to State
22 Farm's Internet program, as long as you don't use the State
23 Farm name or logo or trademarks; correct?

24 A. That would be correct, but I would like to expound
25 on that a little bit.

1 THE COURT: You can explain.

2 MR. REICHLER: Sure.

3 A. I've spent hundreds of thousands of dollars
4 through my career promoting the State Farm trademark as well
5 as State Farm has. It would be totally worthless to me to
6 have a website that does not also have that State Farm
7 trademark on it.

8 Q. So that's why you haven't taken advantage of the
9 opportunity to establish your own internet --

10 A. Well, certainly be one of them. It would be
11 valueless to me.

12 Q. In your opinion?

13 A. Yes, sir, in my opinion.

14 Q. Now, the agents agreement, your contract, does
15 provide that agents may not use the State Farm name, logo or
16 trademark without State Farm's express consent; correct?

17 A. I believe it does.

18 Q. And you would agree that it's not unreasonable for
19 State Farm to limit and closely monitor the use of its name,
20 logo and trademarks to assure that they aren't used in
21 connection with any material or enterprise that is
22 misleading or deceptive; correct?

23 A. I could not disagree with that.

24 Q. Nor would it be unreasonable for the company to
25 limit and closely monitor the use of its name, logo or

1 trademarks to assure that they are not used in connection
2 with an activity that violates legal or regulatory
3 requirements; correct?

4 A. I'm not sure I understand your question.

5 Q. Well, it's really the same question as before,
6 except instead of referring to misleading or deceptive
7 practices, I am now referring to legal or regulatory
8 violations, but I would be happy to repeat the question. So
9 do you agree?

10 THE COURT: I think you'd better repeat the
11 question.

12 MR. REICHLER: I intend to, Your Honor. Thank
13 you.

14 THE COURT: All right.

15 BY MR. REICHLER:

16 Q. So it would not be unreasonable for the company to
17 limit and closely monitor the use of its name, logo or
18 trademarks to assure that its name, logo and trademarks are
19 not used in connection with an activity that might violate
20 legal or regulatory requirements; correct?

21 A. That's correct, but I would like to expound on
22 that, if I may.

23 THE COURT: Go ahead.

24 A. The fact that they could -- It would not be very
25 difficult for them to regulate a website that had

1 "CKnappStateFarmInsurance.com." If every agent were told
2 their website would be JimSmithStateFarmagent.com and my
3 website was CKnappStateFarm.com and someone could log onto
4 my website directly, State Farm could easily monitor those.
5 And in fact, they have informed us that they monitor the
6 world wide web constantly for the use of the word "State
7 Farm." They would find it, and they would be able to know
8 whether it was an accurate use of their name or not.

9 Q. So, you're questioning how difficult it would be,
10 but you agree that it would be reasonable for State Farm to
11 monitor the individual websites of all of the 17,000 agents,
12 in order to assure that the State Farm name, brand, logo,
13 trademarks are not used in an improper manner; correct?

14 A. It would be reasonable and very easy to do.

15 Q. Do you have any idea how much it would cost State
16 Farm, in terms of personnel, in terms of time or in terms of
17 dollars to monitor those 17,000 individual agent websites?

18 A. I would have no idea.

19 MR. REICHLER: No further questions, Your Honor.

20 THE COURT: Mr. Garner.

21 MR. GARNER: One moment, Your Honor.

22 (Pause.)

23 MR. GARNER: No redirect, Your Honor.

24 THE COURT: Thank you, Mr. Knapp. You are
25 excused.

1 (Thereupon, the witness was excused from the
2 witness stand.)

3 THE COURT: Do you have another witness,
4 Mr. Garner?

5 MR. GARNER: Plaintiff calls Cliff Mueller.

6 THE DEPUTY CLERK: Mr. Mueller, you are still
7 under oath, sir. Please be seated.

8 THE WITNESS: Thank you.

9 Thereupon,

10 CLIFF MUELLER,

11 having been recalled as a witness on behalf of the
12 Plaintiff, and having been previously sworn, was examined
13 and testified, as follows:

14 THE COURT: We are only going to be a few moments,
15 Mr. Mueller, because we'll run into the luncheon hour.

16 THE WITNESS: Yes, sir.

17 THE COURT: But let's get started.

18 MR. GARNER: Your Honor, I think I may be able to
19 to do it by the lunch hour.

20 THE COURT: Pardon.

21 MR. GARNER: I may be able to finish with him.

22 THE COURT: All right.

23

24 DIRECT EXAMINATION

25 BY MR. GARNER:

1 Q. Mr. Mueller, in the time you have been a State
2 Farm agent, have you had an understanding of whether State
3 Farm sold directly to the public?

4 A. Yes, sir. It's been, in my 30 years as an agent,
5 our core culture that if anyone were to call a State Farm
6 corporate office, they would refer that person to an agent.

7 Q. Okay. And you are aware now that State Farm is
8 selling directly to the public?

9 A. Yes, sir.

10 Q. And how is it doing that?

11 A. Over the Internet.

12 Q. Do you consider that to be a violation of your
13 contract?

14 A. Yes, sir, I do.

15 Q. In what respects?

16 A. In the preamble to our contract, it says that the
17 company believes that the agent has the best ability to sell
18 and service the policyholders and to build and maintain a
19 successful multi-line company. And then in Section 1A, I
20 believe it's the very first sentence, it says the agent will
21 sell.

22 Q. Does it say anywhere that State Farm will sell or
23 solicit insurance itself?

24 A. No, sir.

25 Q. Did State Farm ever tell you why it was writing

1 policies over the Internet?

2 A. I received a publication in which agency vice
3 president, Chuck Wright, stated that the policyholders were
4 demanding it.

5 Q. Does it make sense to you for the company to be
6 selling over the Internet and then assigning these
7 policyholders to agents on the basis that it is?

8 A. I don't believe so, sir. First of all, I would
9 have to be a select agent to receive any assignments from
10 the Internet. Secondly, when the policies are in fact
11 assigned to an agent, it's at a 70 percent reduction in
12 commissions. Now, what happens there is -- let's say an
13 automobile premium is \$200 every six months. My normal
14 commission would be \$20. Most State Farm agents spend about
15 50 percent of their income to keep their offices open, and
16 50 percent of \$20 is \$10. If I had the same \$200 assigned
17 to me through the Internet, I would make \$6. So for the
18 first year, the commissions that I would receive would not
19 equal the cost of my doing business.

20 MR. GARNER: Nothing further.

21 THE COURT: Mr. Reichler.

22 MR. REICHLER: Again, Your Honor, I leave it to
23 the Court's discretion. It's 12:30. I can proceed or as
24 you wish.

25 THE COURT: Approximately how long will you be,

1 Mr. Reichler?

2 MR. REICHLER: I would say perhaps 20 minutes.

3 THE COURT: Then we'll take the break now.

4 MR. REICHLER: Thank you, Your Honor.

5 THE COURT: We'll resume at 1:45.

6 THE DEPUTY CLERK: This honorable Court stands in
7 recess until 1:45 p.m.

8 (Lunch recess. 12:30 p.m.)

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CERTIFICATION OF REPORTER

I, MARIA M. ALLISON, 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 trial in the case of NATIONAL ASSOCIATION OF STATE FARM AGENTS, INC. vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al, Civil Action No. 4089-02, in said court on the 28th day of July, 2005.

I further certify that the foregoing 125 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the back-up tape of said proceedings.

In witness whereof, I have hereto subscribed my name, this the 29th day of July, 2005.

MARIA M. ALLISON, R.P.R.
Official Court Reporter

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

-----x

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.

Thursday, July 28, 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 1:45 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT
OF AN OFFICIAL REPORTER, ENGAGED BY THE
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:

W. 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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For the Defendant(s):

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AFTERNOON SESSION

P R O C E E D I N G S

THE COURT: Mr. Reichler.

MR. REICHLER: Thank your, Your Honor. Good

afternoon.

CROSS-EXAMINATION

BY MR. REICHLER:

Q Good morning, Mr. Mueller.

A Sir.

Q Mr. Mueller, do you know whether any of State Farm's competitors sell insurance directly to customers over the internet?

A Yes.

Q And which ones sell directly to customers over the internet?

A The one that comes most quickly to mind is Progressive.

Q Do you know what kind of insurance Progressive sells over the internet?

A Automobile insurance.

Q You said Progressive is the one that comes most quickly to your mind. Do others come to your mind, other names?

A GEICO, possibly.

Q I appreciate your effort to be cooperative, but I don't want you to speculate. If you know, you can tell me; if you don't --

A I do not know if GEICO sells over the internet. I do know that Progressive does.

Q Are there any others that are State Farm competitors that you know who sell over the internet directly to customer.

THE COURT: Would you keep your voice up, sir.

MR. REICHLER: I apologize, Your Honor.

THE WITNESS: No.

BY MR. REICHLER:

Q Do you know whether Progressive started selling insurance over the internet before State Farm did?

MR. GARNER: Your Honor, I'm going to object to this as beyond the scope of direct. If Mr. Reichler sees fit to put on evidence of other companies on the internet on his defense, that may be appropriate, but this is not something -- I didn't ask Mr. Mueller about what other companies. I asked him about State Farm.

THE COURT: I believe the objection is well taken, Mr. Reichler.

MR. REICHLER: Thank you, Your Honor. I will not ask him anymore questions about other companies.

THE COURT: Very well.

BY MR. REICHLER:

Q In State Farm's case, you would agree, wouldn't you, that every time State Farm sells a policy directly over the internet it then assigns that business to a State Farm agent?

A No.

Q Does the company keep some of those policies for itself?

A No.

Q If it doesn't keep them for itself, then it must assign them to an agent?

A It assigns them to a select agent.

Q I understand that, yes. But a select agent is still a State Farm agent, correct?

A Oh, yes, sir.

Q So just to be clear, every time the company sells a policy over the internet, it assigns that policy to a State Farm agent?

A That would be logical.

Q And if it's -- if the policy is sold to the customer of an existing, that is, an customer who already has a State Farm agent, that policy -- that customer, that business would be assigned back to that State Farm agent regardless of whether that State Farm agent is select or not, correct, if the customer already has a State Farm agent?

A Yes, I believe that is correct.

Q And I think you testified that -- let me just ask the question.

You have signed the AMD-66 agreement, haven't you?

A Yes, I have.

Q The -- in the case of a new customer to whom a policy is sold on line by State Farm, that customer is assigned to a select agent, correct?

A That is correct.

Q And the select agent to whom the business is assigned, receives commission?

A That is correct.

Q And --

THE COURT: We stipulated to all of that,
Mr. Reichler.

MR. REICHLER: Your Honor, I beg the Court's
indulgence. I'm not going to take much time. I'm leading
up to something. I request that the Court allow me to
complete this.

THE COURT: Very well. Lead up to it quickly.

MR. REICHLER: I intend to, Your Honor, and I now
intend to do it even more quickly.

BY MR. REICHLER:

Q The -- You testified on direct examination that
the commission that is paid to that agent on this assigned
business is a 70-percent reduction of the normal
commission, didn't you?

A Yes, sir.

Q Now, that's because you're comparing the
commission rate that is paid for this assigned internet
business to the rate, the commission rate, that State Farm
pays for personally produced business, correct?

A Correct.

Q And so we have already established that if the --
so that you -- and you're treating, in your analysis, this
assigned business as though it was personally produced?

A That's correct.

Q And you feel that -- is that your position on
this, that if the company generates the business directly
through its investment in the internet and through its
efforts to sell the policy over the internet and then

chooses to assign that business to an agent, that the agent should get the same commission as though it were personally produced. Is that your position?

A Yes, sir.

Q Now, State Farm, in fact, has another commission rate that it pays for assigned business, doesn't it?

A I don't understand the question.

Q I don't want to confuse you, and I apologize.

Mr. Mueller, have you signed the AMD-45 agreement? Do you know what I'm referring to, the assigned business agreement?

A Yes.

Q And that --

THE COURT: I don't know what you're talking about and I don't know that the record knows what you're talking about.

Are you talking about block assignments?

MR. REICHLER: We are talking about assigned business of which block assignments is one form, yes, Your Honor.

THE COURT: It might be better to refer to it in terms of the record.

MR. REICHLER: Yes, I will refer to it in terms of block assignments, yes. I will do that.

BY MR. REICHLER:

Q So an agent who refers block assignments from the company is paid a rate of commission on those policies, that is lower than the personally produced rate, correct?

A Yes. It's 7 percent, I believe.

Q Well, let's get to that. I will ask you about that. And the agents, in order to receive those block assignments, have to sign this separate agreement, which is called the AMD-45 agreement?

THE COURT: AM --

MR. REICHLER: AMD-45.

THE COURT: D, as in David?

MR. REICHLER: Yes, sir.

BY MR. REICHLER:

Q Yes, right?

A Yes.

Q And you testified that you had signed that agreement, yes?

A Yes.

Q Now, so that on assigned business, as distinguished from personally produced business, you have agreed to accept a lower rate of commission?

A Yes.

Q Now, in fact, the rate of -- let's just focus on the assigned business. We will leave the internet sales aside for the moment. I'll come back to that.

On assigned business, the rate of commission that an agent would receive in the pre-renewal period, that is from the time the policy is assigned to the agent until it's renewed by the policyholder is zero percent, zero?

A Yes.

Q And, thereafter -- you said you signed the 84?

A Yes.

Q Thereafter, on renewals, you would get 10 percent; is that right, or am I wrong?

A I believe you are incorrect. It would be 7 percent for a period of 10 years, and then it is considered personally produced. It's used to fund the difference in the cost as used to fund the agent's extended termination payments upon their retirement.

Q Thank you for correcting me, Mr. Mueller. We will go with your figure, the 7 percent.

Now, let's come back to the commissions paid on assigned internet business.

A Uh-huh.

Q The -- pardon me while I refer to the document. In the pre-renewal period, under the AMD-66 agreement, which you signed --

A Yes.

Q -- during the pre-renewal period, the agent to whom the internet business is assigned, gets a 3-percent commission. They call it brand development fee, but it's 3 percent, correct?

A It is 3 percent. I'm not exactly sure of when that payment starts. Not being a select agent, I didn't consider it a problem for me.

Q So let's assume, if you will, that on assigned internet-generated business the commission rate is 3 percent in the pre-renewal period.

A Yes.

Q You would agree with me, wouldn't you, that that compares favorably with the zero commission that agents receive in the pre-renewal period on block assignments that the company assigns to them, correct?

A Yes.

Q The renewal commission on internet-generated business that is assigned to agents, is 9 percent, is it not? Or you don't know?

A I do not know. I do not know.

Q Well, assume for the moment that it is 9 percent. That would compare favorably --

MR. GARNER: I'm going to object to Mr. Reichler asking the witness to make assumptions about figures that are either in documents that are in evidence --

THE COURT: Well, he can ask him hypotheticals.

MR. GARNER: Very well. I will withdraw the objection.

MR. REICHLER: Yes, Your Honor. And the numbers are in the record. I just want to establish the point that --

THE COURT: Start the question again, please.

MR. REICHLER: Thank, you Your Honor.

BY MR. REICHLER:

Q So it -- well, let's use the documents so I'm not accused of referring to something that's not in the record.

Mr. Martin, would you please -- well, actually, it's in evidence. If you have Defendant's Exhibit 75, sir, I would

appreciate it if you would open it. Defendants is in the white binder.

THE COURT: 75?

MR. REICHLER: Yes.

BY MR. REICHLER:

Q I can make it easier. We don't have to do it.

Mr. Mueller?

A Sir.

Q If the record were to show that the rate of commission paid to agents for renewals of internet assigned business was 9 percent, that would compare favorably to the 7 percent --

THE COURT: Between auto or fire?

MR. REICHLER: We are talking in the case of the internet business. They only sell automobile over the internet.

THE WITNESS: That's not correct, sir.

BY MR. REICHLER:

Q Well, I think the answer is all. It's -- well, you can tell me, Mr. Mueller. The 7 percent that you refer to, that agents who receive block assignments, assigned business that are block assignments, is that auto or fire?

A It can be either, sir.

Q So if, in fact, the agents who were assigned internet business received a 9-percent commission on renewals of assigned internet business, that would compare favorably, would it not, with the 7 percent, yes or no? Nine percent is more than 7 percent, yes?

A Nine percent is, in fact, more than 7 percent. However, a block assignment indicates quite a number of assignments all at one time. As a business person, you have to look at your cash flow. And with the lack of internet assignments available, you are actually losing money at those rates, whereas if you were assigned 100 or 150 policies, all at one time, hence the phrase "block assignment," you could afford the difference.

Q I appreciate your qualification, but it's clear, is it not, that just in terms of commission rates, and I'm talking about your profitability, your income, your losses, and what's good business and what isn't. It's a very simple question.

In terms of -- I'm not referring to the document; so I don't mean to distract you. I'm just simplifying it.

Just in terms of the commission rates, the agents who receive assigned internet business get higher rates of commission than the agents who receive block assignments both in the pre-renewal period and in the post-renewal period according to what you have testified, correct?

A Yes.

Q Now, the internet -- the assigned internet business, that is the internet sales of the company that is assigned to State Farm agents, they are -- those sales are not generated by the sales efforts of the agents, right? They are generated over the internet by the company --

THE COURT: I think we've established that, sir.

MR. REICHLER: Thank you, Your Honor.

BY MR. REICHLER:

Q The agreement that you signed does not guarantee you that State Farm will assign business to you, does it?

A No, sir.

Q I'm talking about the agents agreement? It does not, correct?

A No, sir, it does not.

Q So it is within State Farm's discretion whether to assign business to you or not, correct?

A Yes.

Q And the contract does not say that State Farm will not engage in any direct sales of insurance to customer s, does it? It does not say that, does it?

A I'm working on that. It says that the agent will sell insurance, not that the company will sell insurance. And for 30 years, the agents have been told that State Farm does not sell insurance, its agents do.

I believe in Section 1-L -- no, I take it back. That's a different subject. I'm sorry.

Q Well, let's look at 1-A of the contract. It's the same section that you testified about on direct, which is why I'm referring you to --

A Is that in here?

Q It's in the black book, because it's a Plaintiff's exhibit. So it's not in the white book. Have you -- I'm looking -- if you can find -- I believe it's the -- you have signed the 84 agent's agreement; is that right?

A Yes, sir.

Q I think that's Exhibit P-2, Plaintiff's 2.

And you testified about 1-A.

A Yes, sir.

Q And can you read from 1-A, please.

A The agent will solicit applications for insurance, collect initial premiums, membership fees, and charges, countersign and deliver policies.

Q You can stop there. If you want to keep reading, you can, but you have read the part that I wanted to refer your attention to, but I don't mean to foreclose your right to read it if you want to read it.

A That's quite all right.

Q So it says that the agent will solicit applications for business, collect premiums, et cetera, essentially service the policyholders, correct?

A Yes.

Q Is that what -- the language you referred to when you said that the agreement provides that the agents will -- to use your words -- sell insurance?

A Yes.

Q My question to you is this: And if you can find language in here, please tell me; if you can't, tell me that.

Nowhere says in here, does it, that State Farm will not, itself, sell any insurance --

THE COURT: Mr. Reichler --

Q -- directly.

THE COURT: -- the contract speaks for itself, and

ultimately this is a matter for the Court to determine.

MR. REICHLER: I believe that, Your Honor, but Mr. Garner was able to ask the witness the very same type of question.

THE COURT: There was no objection. Had there been an objection, I probably would have entertained it, positively.

MR. REICHLER: Well your Honor --

THE COURT: I'll take judicial notice that the contract says nothing about State Farm either selling or not selling.

MR. REICHLER: Thank you, Your Honor.

That's perfectly all right.

BY MR. REICHLER:

Q Mr. Mueller, State Farm provide you, free of charge, the site on the internet, doesn't it?

A Yes.

Q And you are allowed, permitted, even encouraged, to personalize and customize your site by adding information about yourself that you think will help you attract business, aren't you?

A Yes.

Q Apparently, you haven't taken advantage of this opportunity?

MR. GARNER: Your Honor, I asked Mr. Knapp a line of questions on direct about --

MR. REICHLER: I'll move on.

MR. GARNER: -- about his own --

THE COURT: You made your point.

Continue, Mr. Reichler.

BY MR. REICHLER:

Q I just like to ask you, sir, do you have any idea how much it cost State Farm to develop and support these internet sites that it has provided free of charge to agents such as yourself?

A No, sir, I do not.

Q Now, you are aware, are you not, that agents are able to have their sites accessed, their internet sites accessed directly by the public, including customers --

MR. GARNER: Same objection.

MR. REICHLER: I haven't even finished the question.

THE COURT: I'm sorry. I was distracted.

MR. REICHLER: Let me start over again.

THE COURT: Yes.

BY MR. REICHLER:

Q Are you aware that State Farm allows, indeed, encourages its agents to make arrangements so that their internet sits, such as yours, can be accessed directly by the public without having to go through the State Farm website?

MR. GARNER: Your Honor, I make the same objection. I specifically asked Mr. Knapp a question about whether he was allowed --

THE COURT: Objection sustained.

I'll hear you, Mr. Reichler.

MR. REICHLER: Thank you, Your Honor. Your Honor. It was -- Mr. Knapp did testify on his direct examination that he would have no objection to this use of the internet --

THE COURT: That was Mr. Knapp.

MR. REICHLER: May I please quickly come to my point?

THE COURT: Yes.

MR. REICHLER: He testified that he would have no objection if the company to the internet issue, if the company would permit agents to have internet sites that the public could access directly without having to go through the State Farm website.

When I asked him if State Farm did permit agents to arrange so that the public could access their internet sites directly, he said no, State Farm did not. It's a relevant issue, and I would like to know if this witness is aware of whether that can be done.

THE COURT: The objection is sustained on the grounds that it was not covered with this witness on direct.

MR. REICHLER: I will move on, Your Honor.

BY MR. REICHLER:

Q Do you know what a domain name is?

A Yes, sir.

Q Can you describe for us what it is?

MR. GARNER: Same objection.

THE COURT: Objection sustained.

BY MR. REICHLER:

Q State Farm has made it possible for customers -- for potential customers who go to your internet site to obtain a rate quote on automobile insurance directly from your internet site, correct?

MR. GARNER: Same objection. It's all about his website.

THE COURT: Sustained.

Mr. Reichler, you are instructed to move on, please.

MR. REICHLER: I will adhere to that instruction, of course, Your Honor.

BY MR. REICHLER:

Q Do you have your own independent website independent from that of State Farm?

MR. GARNER: Same objection. There was no testimony --

THE COURT: Sustained.

MR. GARNER: -- on his website.

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

Mr. Garner, redirect.

MR. GARNER: Thank your, Your Honor. I have a couple of items I would like to clarify.

REDIRECT

BY MR. REICHLER:

Q Mr. Mueller, you are not a select agent, right?

A No, I am not.

Q Are you able to receive block assignments?

A No, I am not.

Q Why not?

A Because I'm not a select agent.

Q I would like to ask you to turn to Defendant's Exhibit 75, please. And I represent to you that this is a table showing agent commissions rates by contract and product type that is in evidence.

A Yes.

Q And Mr. Reichler asked you a question about whether rates for -- commission rates for internet sales compared favorably to the rates for assigned business on both pre-renewal and renewal business. I would like to draw your attention to the renewal rate under auto for new internet sales.

What is that rate?

THE COURT: Wait a minute, sir. Let me orient myself.

MR. GARNER: Sure.

THE COURT: All right. Would you put the question to the witness again.

BY MR. GARNER:

Q Mr. Mueller, I'd like to draw your attention to the rates for renewals on auto for the internet. What's the rate for renewals on auto for new internet sales?

A New internet sales auto, renewal 7 percent.

Q Okay, 7 percent. And for assigned business, what's the rate?

A Assigned business renewals, 7 percent.

Q And so is it favorable -- or internet -- is there a difference?

A No, sir, there is no difference.

Q And for fire, what's the rate on renewal for internet and assigned?

A For assigned business, it's 10 percent. On the internet, the renewals are 9 percent.

Q So is the internet favorable?

A I would say it's unfavorable.

MR. GARNER: Nothing further.

MR. REICHLER: May I, Your Honor?

THE COURT: Yes.

BY MR. REICHLER:

Q So was your testimony correct that the treatment of assigned business during the pre-renewal period is less favorable than the treatment of assigned internet business during the pre-renewal period, talking about the pre-renewal.

A Okay. The pre-renewal -- the assigned internet sales would appear to be favorable.

Q By 3 percent to zero?

A Yes, sir.

Q Both on auto and fire?

A Yes, sir.

MR. REICHLER: Thank you.

THE COURT: If there is nothing further, Mr. Mueller is excused.

Thank you, Mr. Mueller.

THE WITNESS: Thank you, Your Honor.

THE COURT: Mr. Garner?

MR. GARNER: We have no further witnesses, Your Honor.

THE COURT: Mr. Reichler?

MR. REICHLER: Your Honor, the Defendant call -- recall to the stand, Mr. Charles Chuck Wright.

THE COURT: How many witnesses do you have on this subject?

MR. REICHLER: Two, your Honor.

THE COURT: Mr. Wright, you are again testifying under the same oath.

THE WITNESS: Yes.

* * * * *

Thereupon,

CHARLES WRIGHT,

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

DIRECT EXAMINATION

BY MR. REICHLER:

Q Good afternoon, Mr. Wright.

A Good afternoon.

Q When did State Farm first put up a website on the internet?

A In 1995. And it's probably good to remind

ourselves that back at that point in time not everyone thought that the internet was what it is now.

THE COURT: Sir, would you please content yourself with the -- answering the question.

THE WITNESS: Sure.

THE COURT: We're trying to finish the testimony by tomorrow. We appreciate your cooperation.

MR. REICHLER: Thank you, Your Honor.

BY MR. REICHLER:

Q Why did State (sic) put up a website at that time? Why did State Farm put up a website?

A Well, we put up a website at that point in time because people prevailed on me that this was a coming technology, that it had the possibilities of making a big impact on the way business was done and commerce conducted out into the future. And fortunately these people were correct. Because within a matter of months, we went from a few thousand hits to thousands of hits, thousands of people coming to our website. In the course of a month and then a few years, we were receiving hundreds of thousands of hits.

And in that process, we were able -- we were able not only to render service to our customers, but we were also able to learn, and that was our objective from the beginning, to learn and to familiarize our agents with this new technology.

Q When did State Farm first begin to sell insurance on the internet?

A In the year 2001.

Q When was the decision made to begin selling insurance over the internet?

A The decision to sell was made actually in 2000 and announced to our agents at the national convention at that point.

Q Why did State Farm begin to sell insurance over the internet?

A Well, from those early beginnings that I talked about in 1995 to 2001, there was literally an explosion of activity on the internet. We can all remember that everything from books to dog food was being sold. But beyond that, there were a number of insurance and financial services companies that were beginning to sell their products on the internet; Allstate, Progressive GEICO, were among those. And we felt that we had to keep up with our competition. There were industry pundits at that point in time who were commenting that in a decade there may be as much as 20 percent of all insurance sold over the internet.

We didn't want our agents to be marginalized and off in the corner, and we didn't want State Farm to be off in the corner if that kind of technology boom was going to happen. And so we made the decision to go ahead and begin selling, on a limited basis, our products.

THE COURT: When did you first consider selling on the internet, like you said, Allstate, Progressive, and GEICO?

THE WITNESS: We were watching that, Your Honor, and we actually made our decision to go ahead in 2000. We had a national convention of our agents in 2000, and we made the announcement at that time.

THE COURT: My question was, when did you first start considering it?

THE WITNESS: Well, I'd have to go back and consult with people who were more closely involved to find out what that exact point was, but my recollection is that we made the decision and we began the serious consideration early in the year 2000.

BY MR. REICHLER:

Q Do any of State Farm's competitors sell insurance over the internet?

A Yes, they do. As I mentioned, Allstate, GEICO, and Progressive are three of our principal competitors --

THE COURT: This is repetitious.

BY MR. REICHLER:

Q Which were the first companies to sell insurance over the internet?

A Well, the first that I really took notice of was Allstate, because they were a principal competitor of ours at that point in time, second to us in auto insurance and homeowner's insurance.

THE COURT: When did you take notice of that?

THE WITNESS: I took notice of that in the year 2000.

BY MR. REICHLER:

Q Do any of those competitors, in addition to selling over the internet, also sell insurance through agents?

A Yes, they do. Allstate has both exclusive agents and brokers. Progressive has brokers, and I'm not sure about GEICO. They, of course, are known for operating as a direct company, but this past year, they were advertising for agents. So I don't know whether or not they've begun that method of distribution s well.

Q When the other companies, including those that have exclusive agents, sell insurance directly on line, do they assign the business or pay commission to agents?

MR. GARNER: Object. No foundation for what they do internally.

MR. REICHLER: Your Honor, we can find out if the witness knows. I can ask him if know first to lay the foundation, and then ask him if he does know.

THE COURT: I think you ought to lay a foundation in respecting his knowledge.

MR. REICHLER: I shall, yes, Your Honor. Thank you.

BY MR. REICHLER:

Q Mr. Wright, do you have any knowledge of the practices of those companies that you have mentioned with respect to what they do with the business that they have obtained through the direct sales over the internet?

A I've attended industry meetings with individuals from these companies and we've discussed from time to time

their arrangements with businesses not personally produced by agents or brokers.

Q Let me ask the question and I'll find out.

When those companies, as to which you have this knowledge, sell insurance directly over the internet, do they assign the business to agents or pay commissions to their agents?

MR. GARNER: Your Honor, I have an objection to the relevance of this line of questioning, whether GEICO --

THE COURT: It seems to me this is hearsay.

MR. GARNER: And it's hearsay.

THE COURT: He's not testifying as an expert. He's testifying as a businessman and an officer of -- I would say, retired officer of the defendant. Experts, understand certain circumstances, are permitted to testify to what they've been told in terms of what the prevailing standards are, but Mr. Wright is not testifying as an expert.

So I will sustain the objection.

MR. REICHLER: Your Honor, when Mr. Swift was asked what information he had from -- about the business practices or effects of the businesses of other agents, he was allowed to testify what those agents told him about their businesses. I made an objection and it was overruled.

THE COURT: But I don't think that this is the same thing.

BY MR. REICHLER:

Q What are house accounts?

A House accounts are accounts that accompany, keeps -- where they the business and they don't pay any kind of commission on that account.

Q Do you have any knowledge other than what you have been told at these industry meetings as to whether other insurance companies, the ones that you mentioned, have house accounts? Do you have any knowledge other than that?

A Only that which I gathered at these industry meetings.

Q Does State Farm have a policy with respect to house accounts?

A Yes. Our policy with regard to house accounts is that we would rather not use them, and we try, in all instances, to assign business back out to an agent as quickly as possible.

When I say, back out to an agent, there are instances where an agent terminates or dies, and you can't assign that business to another agent the next day. But we try as quickly as possible to get that business assigned to an agent.

Q What happens when State Farm sells insurance directly over the internet?

A Well, you have to divide it into two areas, one would be an existing customer. When we have an existing customer, somebody who has another line of insurance with us, that business goes to whatever agent had the other business.

And in setting this up, I was very adamant with our

people that we do it this way so we would maintain the relationship that had already been established with that agent. If it's a new piece of business and we get to the stage of a quote on the internet or we get to the stage of actually writing the business on the internet, it's assigned over to a select agent.

Q In the case --

THE COURT: If you quote or what, sir?

THE WITNESS: If we quote or actually go ahead and bind the coverage on the internet, in other words, make a conditional sale to the individual, then we go ahead and assign that to an agent again, but we assign it to a select agent.

BY MR. REICHLER:

Q In the case of the customer who already has an agent and then purchases insurance from State Farm on line, what's the commission structure?

A In that case, the commission structure is to pay the agent the same commissions that he or she would have received had they consummated the sale themselves. We paid whatever first commission there were and we pay whatever renewal commissions that agent would have earned otherwise.

Q And what is the commission structure in the case of a new customer who purchases insurance on line from State Farm and is then assigned to a State Farm select agent?

A Well, as you can imagine, we gave a great deal of thought to that as we were putting this whole program

together. And it seemed to us that the proper way in which to treat this business was to treat it as assigned business since the agent had not been involved and --

MR. GARNER: Object and move to strike. It's not responsive.

THE COURT: Objection sustained. Please respond directly to the question, sir.

Put the question to the witness again.

MR. REICHLER: I shall, Your Honor.

BY MR. REICHLER:

Q What is the commission structure -- I'm not asking you the reason for it, Mr. Wright. I'm just asking you what is the commission structure, if you know, with respect to assigned business resulting from internet sales?

A There is a renewal compensation that is based on the contract that the agent has. It's less than the normal renewal that an AA3 or AA4 would receive, and there's a brand development fee that's paid as a commission to that agent.

Q Do you know what the amount of that brand development fee is?

A It's 3 percent in the case of an AA3 or AA4 agent, and it's 5 percent in the case of a AA97 agent.

Q And is there any commission --

THE COURT: Five percent?

THE WITNESS: It's 5 percent.

THE COURT: Is this for the first year or --

THE WITNESS: This is for the first policy term,

which in the case of auto insurance, Your Honor, would be 6 months, and in the case of the fire insurance, would be one year. After that, they are paid the renewal fee that I just described.

MR. GARNER: In the case of --

THE COURT: So -- excuse me. The AA97 agent gets 5 percent?

THE WITNESS: Five percent brand development fee, and the AA3 or AA4 gets 3 percent.

BY MR. REICHLER:

Q Now, in the case of assigned business other than business generated through internet sales, is there a commission paid in the pre-renewal period?

A No, there's not. There would be just simply be a renewal paid at that time.

Q So does that -- is that the same answer whether the agent has signed a AA3 or 4 or an AA97 agreement? There's no commission before the policy is renewed?

A That's correct.

Q Why did you decide to establish these two different commission structures, one for the customer who already has an agent and one for a new customer?

A Well, at the point in time that we were putting these together, we were very concerned about continuing to keep good faith with our agents. We didn't want them to feel as though the internet was their competitor, particularly on their own business. So we decided that we would pay the entire commission just as it would normally

have been paid for them in that instance.

In the other instance, because we had considerable costs involved in setting up the internet and keeping it going, we felt that it was more honest to let our agents see that there was a cost involved in that and to pay the reduced compensation amount and the reduced brand development fee because of those costs.

Q With respect to customers -- customers who already State Farm agents who purchase insurance on line, do they have to be select agents to have the business referred back or assigned back to them?

A Excuse me. With people coming in, I was a little confused there. Can you go through that again.

Q Yes, I'm happy to do that.

I'm talking about existing customers of State Farm who have already have State Farm agents. When they purchase insurance on line from State Farm, can that be assigned back to the agent regardless of his status?

A Absolutely.

Q Even if he's not a select agent?

A Absolutely.

Q Are you familiar with an agreement that is called the AMD66 agreement?

A Yes, I am.

Q Would you please look to Defendant's Exhibit 62 in the white binder.

A Yes.

Q Can you identify this document?

A That's the AMD66 agreement that you spoke of.

Q And what is the significance of this agreement, if any?

A Well, it's a voluntary agreement that agents sign and they would make them eligible and to receive business through the internet providing they're a select agent. That's new business.

Q So this applies with respect to new customers, not existing customer?

A That's right. They don't have to sign this agreement in order to receive existing business. If they have a client who filled out an application on the internet, that would be assigned back to them regardless of whether or not they had signed this.

Q And do you know how many or what percentage of State Farm agents have chosen to sign the AMD66 agreement?

A In the states where we are eligible to write internet business, and that's not every state, 85 percent of our agents have signed this agreement.

MR. REICHLER: Thank you, very much, Mr. Wright.

THE COURT: What percentage, sir.

THE WITNESS: 85 percent, Your Honor.

CROSS-EXAMINATION

BY MR. GARNER:

Q Mr. Wright, I'd like to ask you to turn to Defendant's Exhibit 75.

A Yes.

Q Have you seen this document before?

A Yes, I have.

Q And what does it purport to be?

A Well, it's a chart that attempts to show commissions on different kinds of contracts and for different types of business.

Q And it's wrong, isn't it?

A There are some areas that would need to be added.

Q Are all the figures that are on it correct?

A I think all the figures that are there are correct. It's just that there are some additional caveats that would need to be added for it to be fully correct.

Q So it doesn't tell the full story?

A No.

Q Now I would like you to turn to the document that Mr. Reichler just referred you to, 62, Defendant's Exhibit 62, Memorandum of Agreement. That's the AMD66.

A Right.

Q And this is the one that agents sign to -- for -- in order to agree to the commission structure for new business from the internet; is that right?

A That's correct.

Q Where are the commissions?

A Where are the commission?

Q In this document, where are the commissions? Where do we see how much the agents gets?

A Well, I didn't stop to read it, and I haven't seen it before today, so.

Q Oh. You haven't seen the AMD66 before today?

A I haven't seen it for a long time. I haven't looked at it for a considerable period of time. So if you wanted me to render an opinion, I would need to stop and read the document.

Q Well, let's move it along. Will you look at Numbered Paragraph 3 of that document. Do you see Numbered Paragraph 3.

A Yes.

Q And it says, "the announcement referred to above may be amended from time to time in the sole discretion of the companies and the agent shall be bound by all such amendments."

So the company can change this at any time, can it not, in its sole discretion?

A That's right. May I comment on that?

Q Let me just ask one more question, and then I'll give you an opportunity to explain. So if the commission today on new business is 3 percent, next month it could be zero, the power has the power to make that change; is that right?

A That's correct.

Q If you have an explanation, please go forward?

A Counselor, we've always tried to be honest with our agents in matters of this sort. And as I said, as we got into this whole arrangement, we were in uncharted waters. The internet was brand new, and we didn't know whether we were going to write thousands of policies under the internet; we didn't know whether we were going to write

just a few.

And quite frankly, we had no idea what our continuing costs on the internet might be, and we felt that it was fair and honest with our agents to pay this reduced brand development fee at the outset because of those costs and an acknowledgement to our agents that we were fronting these costs on the internet.

Well, you say that we could well have changed this from 3 to zero. We could have also decided, over a period of time, to move it up from 3 percent to something beyond that. So were leaving ourselves room at that point in time simply to make changes as the market conditions allowed us to do that.

Q It's the objective of State Farm to make a profit on each policy that it sells, is it not?

A Not generally, no.

Q State Farm doesn't seek to make a profit?

A We seek to break even. We've never tried to make a huge profit. We don't have to pay --

THE COURT: The question wasn't huge profit, it was a profit.

THE WITNESS: Well, Your Honor, we don't have to pay dividends to anyone, and we have -- as long as our investment income is able to keep up with our growth needs for capital, we're not trying to make a profit. Our principal aim is to break even.

THE COURT: You've answered the question, sir.

BY MR. GARNER:

Q You said there are hundreds of thousands of hits that you get on State Farm.com, correct?

A That's right.

Q And it's true that some of those are existing customers, aren't they?

A Well, we really don't know who they are. Last month we had a 1,876,000 individual hits on our website, and we have no way of knowing who these people are.

Q If you do know that a hit comes from an existing customer, do you inform the agent of that?

MR. REICHLER: Objection, Your Honor. The witness just testified they have no way of knowing.

THE COURT: Overruled.

The witness may answer.

THE WITNESS: Well, if they get to the point of telling us that they are a customer and they want to go back to their own agent, they can do that. I've already testified that if they actually complete an application with us, that business is going to go back to them.

So, counselor, we try in any way we can, when we're aware of it, to direct the person back to their own agent.

Q Do you know --

THE COURT: How do you determine from an application whether it's a new or an old customer?

THE WITNESS: Well, if someone writes insurance with us, we have a database that would match up their name with address.

THE COURT: So you check it out from the application?

THE WITNESS: Sure. Plus they would very likely tell us, Your Honor, whether or not they have existing State Farm insurance. That's one of the questions we would ask them on the internet.

BY MR. GARNER:

Q Do you know what State Farm's sales of insurance on the internet were in 2004?

A I can tell you, counselor, what our total sales on the internet have been since we began selling.

Q And what is that figure?

A That figure is 8,000 applications.

Q You testified that in assessing the brand development fee and the commission rates that you set for new business that was referred to agents, I think in substance you are testifying that you are trying to get agents to acknowledge the investment that the company had made in the internet.

And my question for you, Mr. Wright, is whether within State Farm there is any internal accounting effort to offset that expense with the difference in commissions that are paid to the agents, so that, for example, if you are paying an agent 3 percent instead of 10 percent on a policy, is that 7 percent, in some respect, an offset or is it compared to the investment in the internet or the cost of operating the website?

A Counselor, I've already testified that that brand

development fee is just for the initial policy period. Beyond that, they are paid a renewal fee, which approaches the kind of renewal they get on other assigned business. And it wasn't really done that scientifically, but --

Q Mr. Wright, do you understand my question?

A Well, I do, and I'm coming around to trying to answer it. It's not an easy question to answer, counselor. We tried our best to make the brand development fee something that would help the agent understand that there significant costs in fronting the internet. But was there a scientific figure. No.

THE COURT: That wasn't the question, whether it was a scientific figure. I think the question -- if I may put it to the witness -- is whether there was any conscious effort to relate the fee to the expenditures, the costs, of going internet.

THE WITNESS: Well, Your Honor, we know that an agent, in operating his business, very often tells us that his overhead and expenses are 50 percent, and somewhat higher than that on new business because there's a cost to go out and gather that. And it seemed to us that a 3-percent figure matched up rather --

THE COURT: So the answer to the question was yes? It should have been -- you should have said yes, and then you should have given me the explanation.

THE WITNESS: I'm sorry, Your Honor.

BY MR. GARNER:

Q I'd like to focus it just one more step. Was

there a conscious effort to relate the brand development fee or the commission level to State Farm's expense of developing the internet as opposed to what the agents expenses were?

MR. REICHLER: Isn't that the same question that he just answered, Your Honor?

THE COURT: It seems to me it is.

MR. GARNER: I had thought he related the brand development fee to the agent's expense of developing the business.

THE COURT: He did it originally, but when I put the question to him, it seemed to me that he did answer the question.

MR. GARNER: Very well.

I have nothing further at this time.

THE COURT: Mr. Reichler?

MR. REICHLER: Very briefly.

REDIRECT EXAMINATION

BY MR. REICHLER:

Q You said that since State Farm began selling insurance over the internet, the company has -- in 2001, correct?

A Yes, since 2001, yes.

Q So in four and a half years the company has directly sold 8,000 policies?

A That's correct.

Q And that would be less than 2000 policies per

year?

A That's right.

Q In a typical year, how many automobile insurance policies does State Farm sell over all?

A Total added cars and new cars, about 7 million applications in the course of a year.

Q So the company sells 7 million new policies per year over all, of which under 2000 are --

THE COURT: I think he said applications.

BY MR. REICHLER:

Q When you use the term "application," does that -- are you talking about sales or not? I'm a bit confused.

A Sales. But that's just auto. Then, in addition to that, we --

Q But I just asked you about auto, Mr. Wright.

A But the 8,000 is auto and fire. That was a total of auto and fire apps sold on the internet.

Q I didn't realize that. So the total number of policies, auto and fire, sold by State Farm over the internet -- the total number of policies, both auto and fire sold by State Farm, over the internet, in the last four and a half years is 8,000?

A That's correct.

Q And I will ask you the equivalent question. In a -- over the last four and a half years, how many auto and fire insurance policies has State Farm sold over all?

A Well over 10 million a year. So that would be over 4 million applications or total sales of over 40

million?

Q So overall, 40 million over last the four and a half years of which internet sales comprised 8,000?

A That's correct.

Q How much money has State Farm invested in development, maintenance, and support of the -- part of the website that is devoted to selling insurance over the internet?

A When I retired last year at the end of 2004, our cost on the internet had grown to over \$30 million?

Q Thank you. And that 30-million dollars investment up to now has produced 8,000 policies?

A Well, it has produced 8,000 policy, Mr. Reichler, but it has also produced a lot of service and answered a lot of questions for our customers as well.

MR. REICHLER: Thank you, Mr. Wright.

THE COURT: Does that figure of 30 million, Mr. Wright, include the website that preceded the internet sales?

THE WITNESS: Yes.

THE COURT: Was there any discussion or consultation with any agents prior to State Farm launching the program to sell over the internet?

THE WITNESS: Yes, Your Honor.

THE COURT: Would you please tell us about that.

THE WITNESS: Well, we have a series of meetings that we hold every three years in corporate regarding a variety of topics. We bring agents in to talk to them.

I'm out --

THE COURT: How often do you say you do that?

THE WITNESS: We do that every three years.

THE COURT: Yes.

THE WITNESS: And we also have meetings out in the zones that I'm attending, that I'm invited to. I talk to literally hundreds of agents in the course of the year one-on-one who call me.

THE COURT: Perhaps my question wasn't sufficiently clear, Mr. Wright. I meant to ask whether State Farm had conferred, discussed, or consulted with agents on the subject of internet sales before the program was launched.

THE WITNESS: Yes, Your Honor, we did.

THE COURT: Please tell me about that.

THE WITNESS: Well, we had this meeting that I described in corporate, and we were -- we had -- one of the subjects on the meeting docket was to talk about our progress in the internet.

THE COURT: This is before the program is launched?

THE WITNESS: This is before the sale, before we decided to make a sale on the internet.

THE COURT: Yes. Can you fix the time, as best you can?

THE WITNESS: As best I can, this group that I'm talking about, Your Honor, met over several months. They were a group of people that we called together to look at

varies issues, and we met with them in 2001 about four times prior to actually launching our sales -- excuse me. It was in 2000 that we met with them. And during that period of time, we talked with them about our progress on the internet, the number of hits that we had.

We got a lot of input from them on the kinds of things that they felt we were doing correctly or incorrectly on the internet. Because there was a lot of feedback that we were getting from agents on our website, and the kinds of things that agents wanted to see on that website.

We also had a group of people that was dedicated, a separate group of people that was dedicated to providing feedback to the individuals who were working on the website. In both these instances --

THE COURT: Were they agents?

THE WITNESS: Yes. In both these instances, we were getting input from agents and asking them questions about whether they would feel comfortable if we made sells on the internet.

THE COURT: So the agents would also confer with the technical people?

THE WITNESS: Absolutely.

THE COURT: And that went on in 2000?

THE WITNESS: That went on in 2000. The other group, the advisory group for the internet was an on-going thing that went on over a period of time.

THE COURT: The ones that conferred with the

technical people were not the same group?

THE WITNESS: Different group.

May I add something, Your Honor?

THE COURT: Yes, in a moment.

Yes.

THE WITNESS: Under the heading of communication, this is the kind of thing that we tried to do in a variety of areas. We had also a resource group for training. We had a resource for life insurance.

THE COURT: I'm confining myself to the internet. Now, how are these groups selected? You say you had a group that worked apparently with the executive level of State Farm, another group that worked with the technical people.

THE WITNESS: Yes.

THE COURT: How are these groups --

THE WITNESS: Well, we ask zones to nominate people, and we try to make sure that we have -- that we have diversity within that group. We also, in the case of the people working with the technical individuals, we are aware, as you might suppose, Your Honor, those people who had a particular interest and were calling us.

And so in many instances when we formed these groups of people who would advise the technical people, the technical people already knew the kinds of people that would give them the best input.

THE COURT: Can you tell us approximately how many agents are in a AFO, in other words, how many -- with how

many agents does an AFE typically work with?

THE WITNESS: The average is somewhere between 35 and 40. The reason I give you that kind of range is that of late, some of our AFOs have gotten larger than they were originally.

THE COURT: Is it possible, sir, that -- for agents to be licensed in several states?

THE WITNESS: Yes, it is, sir. Generally speaking, that's done across border kinds of locations like Kansas City, sometimes in the Chicago, Metropolitan area, with Indiana. We have a number of agents in the Texas -- Texarkana area that are licensed on both sides of the border. It's not a common thing, but it is done. And of late, as we've gotten into the securities business, we've have allowed people to become licensed in life insurance in more than one state as well.

THE COURT: I'm interesting interested in knowing how State Farm is licensed to sell over the internet directly and how they are able to do it in virtually every jurisdiction.

THE WITNESS: Well, Your Honor, we aren't able to do it in every jurisdiction. There are a number of jurisdictions where we cannot. But in those jurisdictions where we are able to do it, we have to have people on board who are licensed in those areas who are handling --

THE COURT: So the individual who is employed by State Farm to operate the internet is himself or herself licensed; is that correct?

THE WITNESS: That's my understanding, Your Honor.
I know -- if I may -- may I comment on that?

THE COURT: Yes.

THE WITNESS: I know that we were very careful in making sure that whatever laws needed to be followed were followed in setting that up.

THE COURT: There has been testimony that -- and I believe that you've also testified on this -- that the individual agents have a site on State Farm's website; is that correct?

THE WITNESS: Yes. I'm not a technical expert in that arena, but I believe an agent can attach his own information to our website within certain agreed-on perimeters.

THE COURT: Now, is it possible for a customer to purchase insurance from an agent on that agent's site?

THE WITNESS: No, Your Honor, not at this time.

THE COURT: Not at this time?

THE WITNESS: No.

THE COURT: Was there a time when that could --

THE WITNESS: No, there has not been a point in time where that was possible. The cost of maintaining those applications on the website, maintaining them accurately at this point in time with the technology available, would have been too great to try to manage that and to manage it in a fashion, which would keep it legal.

THE COURT: So there has never been a time --

THE WITNESS: No.

THE COURT: -- that a customer could have purchased a policy from the website through a particular agent?

THE WITNESS: No. Just in the arrangement that I talked about before.

THE COURT: Under the internet?

THE WITNESS: That's right.

THE COURT: I have no further questions of the witness.

MR. GARNER: Your Honor, I have a couple of follow-on questions to your questions, Your Honor.

THE COURT: Yes.

BY MR. GARNER:

Q How -- Mr. Wright how large was the group of agents that conferred with the executive group with respect to the internet in, I think you said 2000?

A My recollection of these is that they were groups of about two agents per region at that point in time. The zones didn't come into effect until the fall of 2001.

THE COURT: Is there a difference between a region and a zone?

THE WITNESS: Yes, sir, there is. At a point in time we had 26 regions and we now have 13 zones.

THE COURT: So if you had two agent per region, and how many regions did you have?

THE WITNESS: We had over 20 -- we had about 26.

THE COURT: So you had about 50 agents?

THE WITNESS: About 50 agents, yes.

THE COURT: Proceed.

MR. GARNER: Thank you, Your Honor.

BY MR. GARNER:

Q Those agents were selected by regional or zone employees of State Farm, they were elected or selected by any agents?

A No. They were selected by the zone management team.

Q Now, you're familiar with the plaintiff in this case, National Association State Farm Agents, are you not?

A Yes.

Q And did State Farm ever ask any -- ask NASFA for its opinion or input regarding internet sales?

A No.

Q And --

A May I comment on that?

THE COURT: Yes.

THE WITNESS: Your Honor, we've never recognized the National Association of State Farm agents as a representative group of State Farm agents.

BY MR. GARNER:

Q And in fact, NASFA has requested meetings with State Farm and State Farm has refused?

A That's correct.

MR. GARNER: There is nothing further.

THE COURT: If there is nothing further, Mr. Wright is excused.

Your next witness, sir.

MR. REICHLER: The next witness is Mr. Gregory Fisher, Your Honor.

BY MR. REICHLER:

Q Good afternoon, Mr. Fisher.

THE REPORTER: Has he been sworn in?

MR. REICHLER: He has been sworn, and he is being recalled to the stand.

* * * * *

Thereupon,

GREGORY FISHER,

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

DIRECT EXAMINATION

Q Good afternoon, Mr. Fisher.

A Good afternoon.

Q Does State Farm presently advertise to the public that it sells insurance on line?

A No, it doesn't.

Q Why not?

A A couple of reasons. Primarily, we're on the internet, and even our sales presence that you would have to find on the internet, would be best described as a defensive posture. We, in fact, have built the architecture within those sites on the internet to make it somewhat tedious, maybe even difficult, for the general public to do a lot of commerce with us. We want to drive

anybody interested in purchasing product from us to the agent.

Q So how do people find out that they can buy insurance over the internet from State Farm?

A Well, generally, they would, I suppose, go on the State Farm website home page, and once they get on the home page, they can find varies options of things they can do, but they would have to go scroll down a few pages to get to the ability to buy on line.

Q State the home page itself state that it is possible to buy insurance on line?

A I don't believe so.

Q And how does a visitor to the home page of State Farm find out that he or she can buy insurance on line?

A He would have to go in to different levels below the home page and find out that perhaps he could get a quote and could buy certain products on line.

Q And then what happens?

A What happens if he wants to do that?

Q Yes.

A Generally speaking, he would identify himself, identify a product that he may be interested in, give us the -- certain information about coverages he would want or information about his vehicle or information about his condominium or a renter's policy and then continue giving us underwriting information, and along the way, you take varies steps to do that.

Q Does the customer always get a rate quote if he

wants one?

A No.

Q Why not?

A We are trying to qualify the customer, and in certain cases, if they give us certain information, we would realize that this customer is not what we necessarily would call "clean business," accident-free, for example. And we would -- instead of giving him a quote, we would refer him to an agent and let the agent work out whatever the situation was.

Q Suppose the agent succeeds in getting a rate quote, what happens next?

A Suppose the agent gets a rate quote?

Q Did I say that? I'm sorry.

Suppose the customer succeeds in getting a rate quote, what happens next?

A Then we would ask him to select an agent, or her.

Q And what if the customer, at that point, elects not to select an agent?

A Then he would not -- if you're assuming he's got a rate quote that he wants to turn into a purchase, the purchase would not happen.

Q So in order to complete the transaction and complete the sell and insurance policy over the internet, a customer has to select an agent?

A Yes, sir.

THE COURT: What was your testimony on that, sir?

THE WITNESS: Yes, he would have to select an

agent.

THE COURT: In order for him to --

THE WITNESS: Complete the process of the sale on the internet, we would require him to select an agent.

BY MR. REICHLER:

Q I call your attention, Mr. Fisher, to Exhibit P-65, Plaintiff's 65.

A Okay.

MR. REICHLER: Your Honor, if I may. Mr. Garner has advised me that the version of the Plaintiff's exhibits that is at the witness stand may not have a complete copy of Exhibit P-65. I would, therefore, request permission from Ms. Altschuller to furnish a copy of P-65, which is complete to the witness. Also I have extra copies for the Court in case the Court's copy of P-65 is not complete.

THE COURT: I don't see a tab marked 65.

MR. GARNER: Plaintiff's, Your Honor.

MR. REICHLER: I'm talking about Plaintiff's Exhibit 65.

Your Honor, by agreement -- actually, prior to the submission of this exhibit book, it was supposed to have included the complete version of 65, but through nobody's fault, it may be that inadvertently the complete version was not substituted for that sort of half version that was in there initially. So just to be sure --

MR. REICHLER: Do I have a full version?

MR. GARNER: You should, Your Honor.

THE COURT: Tell me what the last page is.

MR. REICHLER: I can tell you that just counting each leaf as supposed to double side, there is one two, three, four five, six, seven, eight, nine leaves.

Do you have the color version, Your Honor?

THE COURT: Yes.

MR. REICHLER: May I approach?

THE COURT: Yes.

BY MR. REICHLER:

Q Can you identify the exhibit. Just tell us what this is.

A This looks like a copy of, at least the first page of our State Farm website.

Q And you have described in your testimony til now the process by which a customer, potential customer, navigates this website. I just want to ask you if you could illustrate, at a couple of places in this process, some of the points you were explaining before.

A Sure. If a customer would come to our website --

Q And if you would indicate at each point what page you're on and give the plaintiff's counsel and ourselves and the Court a chance to get to that page before you start talking about it.

A And I assume you want me to try to get you to the pages with a -- conversationally how they would get to the next page and so forth? I'll try.

Q However, you think it's appropriate to take us through, Mr. Fisher.

A Whatever way the customer would get to State

Farm.com would produce this screen first. If you notice at the top of the screen, there are a lot of red tabs. We're on the welcome page, that's why it's gray. And then if the person, the customer, the prospector, or whatever would want to talk about insurance in general, he would click on the insurance tab, which would get him to the back of the first page.

Q Let me just stop you there for a moment.

The first page, the home page, does it say anything there about buying insurance on line?

A No.

Q So you have to go to another page before you can even find out about that?

A That's right.

Q Please continue.

A Okay. So suppose you get to second page, and you see on in the second page where it says up in the upper left side, I suppose, upper left quadrant, get a rate quote. You could slick on that --

THE COURT: I'm not with -- I see it now.

THE WITNESS: I could show you, Your Honor, as we go along.

Get a rate quote, click on that, that gets you to the next page. The next page, which is not numbered -- well, it is numbered 1 of 1, because it's a different series, is a page that talks about buying insurance on line and describes types of products that one can inquire about or perhaps get a rate quote about. And the states that

these rate quotes and the possibility of purchasing insurance are available. In other words, if you look under auto insurance, it tells you that in Alabama, Arkansas, and so forth.

So assuming, then, that you want to buy auto insurance, you would go over to the left-hand side under where it says insurance in red, and you see all the different --

THE COURT: Wait a moment. If I'm on the internet and I've come to this page, and I'm interested in auto insurance --

THE WITNESS: Yes, sir.

THE COURT: -- and it tells me qualifying residents in the following states, and I also have the option to purchase after obtaining an on-line quote?

THE WITNESS: Yes, sir.

THE COURT: So, so far, presumably, the prospective customer is being conducted to get a quote?

THE WITNESS: That's right, if you're in the right state.

BY MR. REICHLER:

Q When you say the right state --

THE COURT: Now he's told he has the option to purchase also after obtaining an on-line quote in the following states?

THE WITNESS: That's correct, sir.

THE COURT: All right. What happens after that?

THE WITNESS: Let's assume he went to buy an auto

quote. You could go over to the left-hand side there under insurance and you see those links or whatever they are. The first one is auto, click on auto, go to the next page. The next page is entitled "auto rate quote." And again, it tells you the states and it would ask you to select the state that you are living up here, and there's like -- I assume a drop-down box, and you would click on the state and say -- I don't know where you live, Your Honor, but let's say you live in Alabama, and you'd click on that. Okay.

THE COURT: Wait a moment.

Qualifying residents in the followings states may have the option to purchase after obtaining an on-line quote.

And you would check on the appropriate state?

THE WITNESS: No, sir. You would go up here to what would be what's -- kind of what's called a drop-down site, up here where it says, "select a state or province." You'd click on that, and it would list some states, and you click on that list, and it populate on this page your state and get you going, making sure you're qualified to even go further.

THE COURT: All right.

THE WITNESS: And then you start going through a series of questions. You asked about underwriting before, I believe, Your Honor. At least on the next page, you will see some underwriting questions that we would start to qualify you for on the next page.

THE COURT: Well, what happens after I click on my state?

THE WITNESS: It would give you a little bar that says, do you want to continue, and you would say, yes, I want to continue, and that would get you to this next --

THE COURT: To the next page?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: So then we start asking some questions about you. For example, during the last five years has any driver or household member had a major violation.

THE COURT: I still haven't gotten the quote?

THE WITNESS: Oh, no, you won't until we qualify you --

THE COURT: All right.

MR. REICHLER: My strong recommendation is that you qualify His Honor.

THE WITNESS: Yes, I think you're going to be one of our best customers.

Anyway, you'll notice on that page we have some series of yes and nos. Generally speaking, if you answer no, but you give us a, quote, a negative type of answer; I've had a major violation; I've had insurance refused or cancel; I've had my license suspended or revoked, chances are you're not going to be able to get neither a quote nor the ability to buy on line, but we're going to refer you to an agent. Because as I said earlier, quite frankly, very

few of our people who are customers who come into this -- potential customers who come in this way, ultimately qualify for a quote to be bound on line.

Any time there's something that needs to be discussed with a professional agent, one of our State Farm professional agents, tell me about your accident, tell me about what was it at-fault, tell me about the violation, we would try to qualify you. We're not trying to get rid of you at this point. We're simply trying to get you to an agent so he can ask direct questions that they do all day long.

So we go through all these questions. And if we're still good so far, you see it at the bottom -- or at the middle of that page on the right-hand side that says, "continue --

MR. GARNER: May I ask a question, here, Your Honor. I think it would be helpful.

THE COURT: Yes.

BY MR. REICHLER:

Q You're on the page that says "getting started," correct?

A Yes, sir.

Q I call your attention to the line that says -- under "Does any driver have" -- the second line -- "an at-fault accident or violation within the last three years?"

And in this example, yes is -- the answer is yes?

A Yes.

Q Maybe you can show what happens when the answer to that question is yes, that there has been an at-fault accident, or violation within the last three years.

A That would automatically, when you hit that yes, take you to the next page, or in the case of a computer, the next screen over here. And it says, we will tell you then, because of that violation or accident, we are unable to furnish an on-line quote due to the information you provided, contact the State Farm agent.

And you see that?

THE COURT: Yes.

THE WITNESS: And if you click on that, you would get a drop-down screen advising you how to get to a State Farm agent. Because, quite frankly, you're not going to be able to get a quote or be able to purchase on line at this point. Okay.

THE COURT: Does the prospective customer get the name of an agent?

THE WITNESS: Yes, or the ability to get the name of an agent.

THE COURT: How is the name selected?

THE WITNESS: It depends on the customer. if it's an onboard -- if it's a State Farm customer, he will simply put in some information on the screen, or say a Zipcode. The Zipcode will list all the agents. His agent would be on there. He can click it. He's now contacting his agent that way.

THE COURT: It's Zipcode oriented?

THE WITNESS: Or address oriented, or town oriented, or --

THE COURT: It's oriented some way?

THE WITNESS: Yes.

THE COURT: And he gets a number of names?

THE WITNESS: He could.

THE COURT: And he selects whichever name he wants.

THE WITNESS: Yes. And theoretically, if has his own agent on there, he will go to his own agent.

THE COURT: Does he make the selection on line? Do you know who he has selected?

THE WITNESS: Not necessarily. He would select his agent. We would give him his agent's name on line there, because we would ask him certain questions; give us a town, give us your Zipcode, give us your -- I'm trying to think what all the other boxes are, but there are three or four different ways to get in there.

THE COURT: Do you know what selection he has made, what agent he selected?

THE WITNESS: Not yet. I don't know -- from our conversation, I don't even know who he is yet at that point. Remember now, he hasn't gotten the rate quote, and he hasn't gotten -- he hasn't bought anything because he hasn't gotten the rate quote. At this point, he can select any agent.

THE COURT: And his selection is not disclosed to the internet? In other words, does the internet know the

agent that he has selected?

THE WITNESS: I'm not sure I understand your question, but let me tell you what would happen next, is my best understanding of this.

He would come up with an agent, and it would say, would you like to contact this agent; would you like directions to the agent's office, that kind of thing; would you like the agent's phone number. At that point, we would refer him to an agent and hopefully the agent would get back to the individual and talk about their needs.

MR. REICHLER: May I ask a question here, Your Honor?

THE COURT: Yes.

BY MR. REICHLER:

Q When you say, "we would refer him," you mean the customer would refer himself?

A Yes.

Q Because I think you said State Farm, at this point, doesn't know who the customer is up at this point in the process?

A I don't think so.

Q And --

A There is a reason for that. Should we continue?

Q I would let His Honor continue. Only if I feel I can be helpful, otherwise, I'll let His Honor continue, or unless the Court would rather I continue.

THE COURT: At this point, do we know who the customer is?

THE WITNESS: Not yet, not quite.

THE COURT: We don't have the name of the customer?

THE WITNESS: Not for a couple more screens, Your Honor.

THE COURT: All right. I still don't know when the customer is given a series of names. Is he asked to select the agent then?

THE WITNESS: I'm not sure how to answer that then. Perhaps if we would just go a few more steps, it would become clear for you.

Can we try that?

THE COURT: Yes.

THE WITNESS: Suppose -- I'm assuming now, Mr. Reichler, you want me to go to the next screens?

MR. REICHLER: I would ask you to. We're back to getting started again, but here the answers are different. Here there are no problematic answers, so it's the other alternative.

THE WITNESS: Okay. So we continue. As we start getting some information about the drivers, the vehicles, and -- this is an auto quote -- the vehicles and so forth on the next page, which would be on your left.

BY MR. REICHLER:

Q Well, I'm sorry, Mr. Fisher. I want to make sure that everybody is capable of following along. You're now on -- we just left the page that said, We are unable to furnish an on-line quote due to the information you

provided, and then contact a State Farm agent; is one of the bottoms there for you to click on.

A Uh-huh.

Q And then the very next page is getting started begin, and that's really not in sequence. That would be -- that is the same as the previously page, only this time you have a different answer to the question.

A Yes, let's just continue, because now we're going to assume we're maybe getting a clean driver here. So we are getting general information, and then we get driver information on the next page where we say the first name of the driver is going to be, in this case, be Mark. We get some demographic or some --

Q Wait for the Court to catch up, Mr. Fisher.

A I'm sorry.

THE COURT: What happened to the page "general information," which is before driver information?

THE WITNESS: We're getting some general information about the number of drivers in the household, number of cars you want auto quotes on, information about how the vehicle has been driver, et cetera.

THE COURT: We're now dealing with a customer --

THE WITNESS: Yes, sir.

THE COURT: -- who wasn't told to contact the agent?

THE WITNESS: Yes, sir. Who we're going to assume is a clean risk and wants to keep on going.

THE COURT: He was promoted, so to speak?

THE WITNESS: So to speak, yes.

And then we need to get some information beyond the general information about the driver. So that's going to be in the page over here in your right where we ask for the birth date and names, and we're going to start calling him something in the rest of the pages.

MR. REICHLER: I should just point out, Your Honor, this is not a real person. This was an exercise that was done as an illustration. So this is not actually something somebody applying for insurance, but what it look --

THE COURT: I understand.

MR. REICHLER: We're getting underwriting information. I told you this was tedious.

THE COURT: Yes.

THE WITNESS: Okay. Then we have to find out about the car you might want to insure, and that's on the next page under "vehicle information."

So we get information about the vehicle on the left-hand side of -- the left-hand page as is opened there, and then we get some information about how you're going drive it. Are you going to drive for pleasure, for work, how many days a week are you going to drive it, how far you're going to drive it. Because these are all rating factors that we're going to use in coming up with the rate for Mark.

Other vehicle information that might give discounts or other things such as is your vehicle equipped

with anti-theft mechanism. On the next page, more information about the percent of time that Mark is going to drive the car or perhaps somebody else in the household might drive the car, Mark's wife, Mark's children, whomever. And this is all information that an agent would gather in the course of their taking an application in their office, except they don't have to turn so many pages or go so many screens.

And then we're going to ask the individual what kind of coverages he would like to purchase; injury coverages, automobile damage coverages, comp, collision, and all these kind of coverages, which may or may not an option in various states, but we have to have some state-specific information behind each one of these screens.

And eventually, assuming that the individual qualifies, which is less than 10 percent of the time, for a rate quote that he can actually purchase on line, you get a -- view a rate quote screen. In this case, Mark is going to be paying \$547 and change or 91 cents a month if he chooses to purchase a -- insurance.

And if you'll notice in the middle of that page, right in the middle, it is in bold and it says, "forward this quote to agent." And that allows -- and by hitting that quote to an agent, that allows you to send this quote to the State Farm agent that you select, and that information goes to the agent.

THE COURT: Well, when did he make the selection

of the agent?

THE WITNESS: When he starts -- when he hits that button it will give him all the drop-down screens. I'll just about there. If you're stay with me one more page.

THE COURT: I'm still on the page of the quote.

THE WITNESS: Okay. Hit --

THE COURT: And then it says, forward to agent.

THE WITNESS: And that will get you to the next page, which is really part of the quote. And on the next page it says, "State Farm agent locator." You see it on the right side. This page here is really part of this other screen. So now we're ready to get you an agent.

THE COURT: Wait a moment. I don't see State Farm.

THE WITNESS: It's on the other page, on the right.

THE COURT: Are we on -- oh, I see.

THE WITNESS: This screen here.

MR. GARNER: Your Honor, if I just may explain why this appears on two pages. It's because on the screen, it's something that is long. And so you'd have to sort of scroll down to get the whole page. And so in photographing it, it has to be put on two pages.

But the viewer rate quote here occupies two pages, but it would be on the same screen in real life.

THE WITNESS: So then, now we're going to look for an agent, okay. "Use one of the agent locators searches below to find an agent in the state or province where you

desire coverage. The following screen will provide a list of matches."

Perhaps you want to put in the agent's Zipcode. So you put the agent's Zipcode. In this case, it was 60504. You hit the button, and you get all the agents -- well, in some cases you would get all the agents who are eligible to write this -- have this business assigned to them in that Zipcode, and you pick one.

THE COURT: He hasn't bought the insurance yet?

THE WITNESS: He may have. We took out the -- I don't believe the screen in here with the credit card information is on it, probably not.

MR. REICHLER: If the Court would like me to explain. We didn't actually buy the insurance, because that would have required somebody to actually pay for the insurance. So at this point in the process the illustration has to stop because we didn't want to spend the money to pay for the insurance. But the -- one can forward to an agent after getting the rate quote or one can buy the insurance and then forward to --

THE COURT: Well, where is the -- do we have a printout of the page where the prospective customer is given the choice of buying directly or going through an agent?

MR. REICHLER: Your Honor, yes. If you go back to the viewer rate quote page.

THE COURT: The view --

MR. REICHLER: Viewer rate quote where the price

is quoted.

THE COURT: Yes.

MR. REICHLER: And Mr. Fisher talked to you about the forward to an agent --

THE COURT: Yes.

MR. REICHLER: -- click-on box. If you look to the right, you will -- I think that's the answer to your question.

THE WITNESS: You hit the "apply now" bottom and you get, how would you like to pay for this; Visa, MasterCharge, et cetera, and then you go through all those screens to get --

THE COURT: I see. This is the point where the prospective customer ops either to see an agent or to buy now?

THE WITNESS: Yes, but he will still need to see an agent or get with an agent, because there are some things he needs to do.

THE COURT: The hypothetical customer has hit the button, apply now.

THE WITNESS: Okay. And he would be asked for his information, how he wants to pay for -- well, he's going to put on credit card, generally. And after all of that information is done, we still need an agent -- for him to select an agent at that point.

THE COURT: Why.

THE WITNESS: Because we sign all this business to agents. All the business on internet goes to our agents?

THE COURT: So he's, the customer is the one who decides the individual who -- the agent --

THE WITNESS: That's correct.

THE COURT: -- who will handle --

THE WITNESS: The business.

THE COURT: -- the business?

THE WITNESS: Yes, sir. Then the agent will also be notified that he's getting a new customers and details about the customer.

THE COURT: In the list of brokers, are brokers who are select agents?

THE WITNESS: These would be a list of agents who would be not necessarily select agents. This could be an on-board State Farm customer of an agent who doesn't have auto, who has homeowner's, and now he wants to buy an automobile policy on line. He would be directed to his homeowner's agent.

THE COURT: Yes. But if he doesn't, if he's new --

THE WITNESS: If he's new, he can just go ahead and select from a screen that would be select agents.

THE COURT: Select agents?

THE WITNESS: Yes, sir.

THE COURT: All right. So he's bought the policy, but he has directed to the agent that he selected?

THE WITNESS: That's correct. And the agent is also notified of the transaction.

BY MR. REICHLER:

Q Can the transaction be completed even though it's indicated --

THE COURT: We're at the break now.

MR. REICHLER: Thank you, Your Honor.

THE COURT: We will resume at 4:00.

(Whereupon a recess was taken from 3:45 p.m. until 4:00 p.m.)

THE COURT: Mr. Reichler, do you plan to another subject other than Plaintiff's Exhibit 65?

MR. REICHLER: Yes, Your Honor. I believe that while I was in the lounge I might have left my list of questions outside. I sincerely apologize. If I can be excused for a minute to get them.

THE COURT: Yes.

MR. REICHLER: But I do intend to move to another subject. But if your Honor wants to continue on this subject --

THE COURT: I just have one question to ask, but you go ahead and get your papers.

MR. REICHLER: I have it, Your Honor. Lack of sleep. I had it in my inside jacket pocket. I apologize to the Court.

THE COURT: Mr. Fisher, when is the first time that the website knows that the prospective customer is an existing customer, in other words, is an old customer?

THE WITNESS: Is an on-board customer? I believe there's a screen early on that ask you if you are a current State Farm customer.

THE COURT: That's early on?

THE WITNESS: Yes. There are a lot of screens we moved through here that we didn't put in here, I assume.

THE COURT: Proceed.

MR. REICHLER: Thank you, Your Honor.

BY MR. REICHLER:

Q Now that we've been through the process, Mr. Fisher, what are the results of State Farm's use of the internet to sell insurance? What have been the results?

A They would be minimal. In the four or five years, I believe we sold 7,500 auto policies and maybe another 500 either condo or renter's policies.

Q What about customers who come to the internet and then get directed to agents.

A Without purchasing any --

Q Yes.

A The results are much more significant, I believe. We would -- let's see, in 2004, for example, we had about 103,000 quoted leads that resulted in just short of about 15,000 sales.

THE COURT: \$15,000?

THE WITNESS: Sales.

BY MR. REICHLER:

Q And those sales were --

THE COURT: How many leads were there that were directed to the agent?

THE WITNESS: 103,000.

BY MR. REICHLER:

Q You said quoted leads?

A Yes.

Q Are there leads other than quoted leads before a quote is obtained?

A Well, at any point along the way, a customer or a prospect can ask -- asked us don't go through the lead process and go find an agent.

Q Do you have any record of how many times that happened? If you do or if you don't know, just --

A I don't think so.

Q But you do have a record of quoted leads?

A Yes.

Q And what is a quoted lead?

A Well, a quoted lead is somebody comes in looking for insurance information, takes the time to give us their information, gets a quote, and they say, maybe I don't want to buy right now, and we would -- and would you like to talk to an agent or have more conversation. Then we would send those leads, with the quote on it, to a State Farm agent of that individual's choice, hope that the agent would call that individual and get together. And we have about a 15-percent, what we call, closing ratio, 15,000 over 100,000 leads.

Q So you said in 2004 there were how many quoted leads that were sent to State Farm agents?

A More than a 103,000.

Q And of those 103,000 quoted leads that went to State Farm agents, how many policies were sold?

A Just short of 15,000.

Q And they were sold by agents?

A Yes, sir.

Q And what commission do the agents get on that?

A Full commission, personally produced.

Q Does State Farm allow it's agent to have their own sites on the internet?

A Yes.

Q And how so?

A Well, we don't authorize the use of our -- if you're talking about their sites not in State Farm -- Is that what you're talking about?

Q No. I'm talking any site.

A Yes, they can have a site if they want, but they can not use our trademark, logo, or refer to our products.

Q Well, do they have a site within the State Farm --

A Oh, within State Farm, yes, they do.

Q And there has been an exhibit marked already for identification, which is Mr. -- I believe it's the internet site for Mr. Knapp.

With permission, I'd just like to hand to you.

A I think I have it.

Q Is this typical of the internet sites that State Farm maintains for its agents?

A Yes, it is.

Q And State Farm maintains such a site for every one of its 17,000 agents?

A Yes, they do. Unless for some reason, I suppose, they would op out. I don't know of anybody who has oped out.

Q Who pays for developing, maintaining, supporting, these internet sites?

A State Farm does.

Q Do you know how much it cost State Farm to do that?

A Roughly \$9 million.

Q Are agents permitted to customize or personalize their individual internet sites?

A Yes, they are.

Q Can you show us on Mr. Knapp's internet site where he would normally do that.

A He would be normally in the middle section where, in this case, it says about Steve, and Mr. Knapp would be free, within certain guidelines, to put information about him that might be interesting to customers.

Q And what types of information do agents usually put in there?

A Sometimes they put in information about them being perhaps an hometown agent, a graduate of a certain university, certain designations they've had, certain recognition they've had, certain affiliations they have with organizations, whatever.

Q What percentage of State Farm's agents actually do customize or personalize their individual internet sites?

A I think it's, give or take, 92 percent.

Q How can a customer or a member of the public gain access to State Farm agents' individual internet site such as Mr. Knapp's?

A Well, it would be two ways, I suppose, at least two ways. One way would be come into the State Farm.com home page and go through the process that we just went through before the break. Another way would be for an agent to create a domain name for himself, which is -- could we use Mr. Knapp, for example. It would say Steve Knapp.com. You put your name, for a fee, on a search engine like Google or Yahoo. And then if a customer would go into Google or Yahoo and type in "Steve Knapp.com," or whatever, a domain, it would take you right to the website.

Q So the agent could arrange for a customer to have direct access to his or her internet site without going through State Farm's web pages?

A Yes, many of them do.

Q And the way you do that is -- to use your example -- you purchase a domain name, in this case, Steve Knapp.com. How much does that cost, do you know?

THE COURT: Purchased from whom?

THE WITNESS: Google or Yahoo, a search engine-type organization. And then when you go there, you type in the name, Steve Knapp or Steve Knapp.com, and that will link up with, among other things, I suppose, he might have other links, but it would link up our website home page -- not our home page. It would go through the home page, bypasses State Farm's home page, and go to that

screen right here. The screen would be -- we call it --

Q Mr. Knapp's individual internet site?

A Yes, Mr. Knapp's, yes.

MR. REICHLER: Your Honor, can we -- since we're referring to it, could we move that into admission now? I think Mr. Knapp already identified it as well. It has been marked for identification.

THE COURT: Is there any objection?

MR. GARNER: No objection.

THE COURT: Without objection, admitted.

(Defendant's Exhibit Number 84 was admitted into evidence.)

BY MR. REICHLER:

Q Just to be clear, your testimony is that Mr. Knapp were to go out and obtain a domain name, Steve Knapp.com, anybody could access this exhibit --

MR. REICHLER: Pardon me. May I ask the clerk what number this exhibit is going to be.

THE COURT: 84.

BY MR. REICHLER:

Q -- Defendant's 84, can get right there just by typing in Steve Knapp.com?

A Well, anybody as along as they would go through the search engine, the right search engine.

Q Google or Yahoo?

A Yes, sir.

Q Do you what it would cost Mr. Knapp, for example, to obtain a domain name? Do you know the price?

A I've heard prices 125, 140, \$150 to set it up. And then there's -- I think there's a monthly fee of, I don't know, 7, \$8, \$9, something like that.

Q Now, is does State Farm facilitate the direct access in any way from the agent's domain name right to his internet site?

A Yes. We provide what we call the reverse engineering backroom technology to hook it up.

Q And do you charge the agent for that?

A No, sir.

Q You pay for that yourself?

A Yes, we do.

THE COURT: If I understand you correctly, it's not possible for a customer or prospective to purchase a policy by reaching Mr. Knapp's site on the State Farm's website?

MR. REICHLER: Your Honor, I am coming to that. If Your Honor wants to get to it right away, that's fine. But I do have some --

THE COURT: We've had testimony that that can't be done.

MR. REICHLER: Well, I would appreciate if I could examine the witness on this, but I defer to Your Honor.

THE COURT: Is my understanding correct or incorrect, sir?

THE WITNESS: At the present time it's not possible, sir, but it will be shortly.

THE COURT: What do you mean by shortly?

THE WITNESS: Third quarter, next year.

BY MR. REICHLER:

Q We talked about the domain names and the direct access to an agent's internet site. Do you know what percentage of State Farm agents have already obtained their own domain names -- have already obtained their own domain names and arranged for customers to access their internet sites directly?

A I think the number is 63 percent, give or take in the 60s.

Q Does State Farm encourage or discourage agents to do this?

A Well, by providing the backroom technology, they would certainly encourage it. We're spending lots of money to allow them to do that.

Q Is it possible for a customer to obtain a rate quote today directly from the agent's internet site, a rate quote?

A Well, when you say from the agent's site or the State Farm --

Q Well, take a look at Exhibit D-84.

THE COURT: D-84?

MR. REICHLER: D-84. This is Mr. Knapp's internet site, and I refer you specifically under "quick links."

A Oh, rate quote. Yes, it is.

Q And --

THE COURT: I don't see that.

All right.

BY MR. REICHLER:

Q The Court has already stolen some of my questions, Mr. Fisher, so I'm just going to skip over those and go to this.

You mentioned that in the third quarter of 2006 it will be possible for customers to go directly to an agent's internet site and buy State Farm insurance on line directly from the agents?

A That's the plan and that's the time line, yes sir.

Q Is there a cost to State Farm associated with developing and implementing this policy?

A Yes, there are.

Q And what is that cost?

A Somewhere more than 10 million dollars.

Q Is State Farm planning to seek reimbursement of any part of this from the agents?

A No, sir.

Q Is it possible for an agent to set up an internet website that is totally independent of and wholly unconnected to State Farm or its website if the agent wants to?

A Yes.

Q Are there agents who maintain their own totally independent and wholly unconnected website?

A Yes, there are.

Q Has State Farm ever tried to stop them from doing this?

A We simply don't authorize the use of our trademarks or logos or name, and we don't want them to be talking about our products on their own, quote, own-grown websites.

Q And why is that?

A Well, for lots of reasons. One having to do with protecting our own logos and trade secrets and making sure those are all in order. They'd be in all different states, and we would have to pay attention to the state regulations. We would have to worry about information contained on there that would link any kind of misinformation back to State Farm, and we would have to maintain it and have people constantly look at them, check them, so forth.

Q And would there be a cost of some kind?

A Oh, absolutely.

Q Do you have an approximation of what that cost would be to State Farm?

A No, but it would be a high cost in time and resources, money, talent that could be best used other places.

THE COURT: It would be what?

THE WITNESS: Best used other places, the money, the time, the talent.

BY MR. REICHLER:

Q In your opinion, what would be the consequences to State Farm if all of a sudden it stopped all sales of insurance over the internet?

A Well, we'd lose the experience we're gaining. We don't know what's coming. We do know that the customers' needs and choices are changing with each new generation. My generation used -- became very familiar with telephones and televisions. It's quite different than my grandson's generation who are growing up on the internet. We know that they have different buying preferences. They know they have different feelings in general about insurance and prices and value of relationships.

We don't know where that's going, Mr. Reichler, but we want to be ready. And if we were to quit doing it, we would be actually losing ground to our people with whom we're competing.

Q And if State Farm were to suddenly stop selling insurance over the internet, in your opinion, what would be the consequences for the agents?

A Well, obviously the agents would be losing those leads that we'd been sending them. They'd be losing the sales we have been assigning them to. There would be an opportunity cost lost probably more so in the future even as it is now. And there are lots of -- a growing number of individuals in North America whose buying habits are changing, who prefer, in some cases, not to purchase directly from an agent's office, who prefer to do it in the middle of the night or on weekends or other ways.

We don't know how many people there are or how many they're going to be, but we know it would be -- put us at a competitive disadvantage and that's why we're spending so

much money trying to get ready.

Q And all of those people, if you do sell them a policy, you immediately assign them to an agent?

A Yes. And we hope that the agents will mulitline those folks.

Q What do you mean, mulitline those folks?

A Sell other policies to them. In fact, they are.

MR. REICHLER: Thank you. No further questions.

THE COURT: Mr. Garner?

CROSS-EXAMINATION

BY MR. GARNER:

Q Mr. Fisher, you testified that State Farm does not advertise to the public, that it sells insurance on line. But, in fact, State Farm does advertise State Farm.com, doesn't it?

A It does.

Q And, in fact, doesn't State Farm.com appear in virtually all of its advertising?

A As a tag line, mainly, yes.

Q So that these new people of whom you spoke, who are -- whose buying habits are geared towards the internet, nowhere to find State Farm on the internet or you want them to know where to find it?

A Yes, we certainly do.

Q And that's why you advertise State Farm.com.

You also testified to --

THE COURT: Did he answer the question?

THE WITNESS: I'm sorry. I didn't know that was a

question.

BY MR. GARNER:

Q And that's why you advertise State Farm.com?

A That's why we mention State Farm.com, yes.

Q You mentioned that in 2004 there were 103,000 generated leads. And those were all sent to select agent, weren't they?

A Not if these were customers of current agents.

Q Fair enough. If they were leads from new customers, they were sent to select agents only?

A That's correct.

Q And do you have any knowledge as to how many of that 103,000 were new versus existing customers?

A No, I don't.

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

MR. REICHLER: I have no redirect, Your Honor.

THE COURT: Mr. Fisher, if I understand it correctly, when an agent wishes to advertise, and use State Farm's trademark or logo, that has to be cleared with you, with State Farm?

THE WITNESS: That's correct, sir.

THE COURT: Wouldn't it be also feasible in terms of the agent having a website, their own website, to have the agents submit to State Farm the proposed website for State Farm to clear it?

THE WITNESS: It could be feasible, sir, but that would be for one day. What would happen --

THE COURT: We're going to get to that. But that

would be feasible?

THE WITNESS: Feasible? It would be durable, certainly, I mean for the agent to send it to us, yes.

THE COURT: Alternatively, State Farm could have a template of a model of an individual website for an agent.

THE WITNESS: Yes, sir, we do right here, for all agents.

THE COURT: Yes. And you could do that the same thing for an independent website, could you not?

THE WITNESS: I suppose we could.

THE COURT: And if the agent wished to enhance it, it could only be done with the approval of State Farm, that's feasible?

THE WITNESS: Not as -- well, there would be complications to it, but anything is possible for the money.

THE COURT: What complications?

THE WITNESS: The complications are, behind the website, whatever the website is linked to, what is changed on the website from time to time, how a website is used would require constant monitoring on our part.

THE COURT: Let's talk about monitoring.

THE WITNESS: Okay.

THE COURT: Right now there is no way to monitor what an agent says to a customer or a potential customer, am I correct?

THE WITNESS: In the course of his doing his normal business?

THE COURT: Yes.

THE WITNESS: Other than giving proper training and trust, yes, sir.

THE COURT: But what happens in his office is not capable of being monitored?

THE WITNESS: Correct.

THE COURT: Now, couldn't an agent's website be monitored by the AFE's office periodically?

THE WITNESS: Yes.

THE COURT: Let's talk about costs.

THE WITNESS: Okay.

THE COURT: And we'd have to talk -- and this has been stated in the -- one of the memoranda filed by your attorney that there would considerable costs with respect to what was called connectivity. In other words, if you're going buy a policy from the agents website, it would have to be connected?

THE WITNESS: That's correct --

THE COURT: -- to State Farm's website?

THE WITNESS: Yes.

THE COURT: And as you said, the costs would be quite significant.

THE WITNESS: Enormously significant, sir.

THE COURT: Yes?

THE WITNESS: If I could answer your original question with perhaps a rhetorical one, what would be the point for an agent simply to have his own website if, in fact, he didn't have the connectivity to State Farm to do

anything with it? Wouldn't it make more sense -- this is kind of how we make our business decision and what we're going forward with giving all of them that connectivity, not just on rates, but claims, coverages, filings, the ability to pay premiums, all these things have come forward.

THE COURT: We're talking about the sell of policies now.

THE WITNESS: Yes, sir.

THE COURT: Let stick to that.

THE WITNESS: Okay.

THE COURT: Has State Farm considered sharing the costs with agents, sharing the cost of connectivity?

THE WITNESS: Well, we're going to do that for them, sir, in the next --

THE COURT: Yes, but alternatively --

THE WITNESS: Okay.

THE COURT: -- State Farm could share the costs with the agents. The agents, if they're getting a benefit from this, they can't expect a free ride. And if they want this, they ought to pay for it. If they are willing to connect with State Farm, why can't that be considered?

THE WITNESS: I think it could be considered, but the price of connection would be so high that it would not happen, sir. On 17,000 different websites that we would have to connect up to. We're trying to do that within one website in the next year, and we think we can get that done exactly what you're thinking about. Otherwise, in my view,

and this is a business decision, it's what can you do and what should you do.

THE COURT: I understand.

THE WITNESS: So we made a business decision to do this.

THE COURT: There's a difference between a domain and a website, is it not?

THE WITNESS: Oh, absolutely, sir.

THE COURT: And what State Farm is going to afford the agents next year will be a domain?

THE WITNESS: No, sir.

THE COURT: It will be a domain that will be connected with State Farm, as I understand it.

THE WITNESS: No. It will be this website here, connected to the process we talked about when I went to State Farm, earlier before the break.

THE COURT: I thought that an answer to Mr. Reichler's questions you said that it was contemplated that an agent could establish a domain --

THE WITNESS: Yes, sir.

THE COURT: -- with Google?

THE WITNESS: Yes, sir.

THE COURT: And that that domain will be connected with State Farm's website?

THE WITNESS: No, sir. This is already done. This is done by more than half of the agents. They have already established a domain that when they would click -- say Agent Swift, David Swift, put his name in the search

engine, it goes right to Mr. Swift's web page.

What we're trying to do, then, is put all that connectivity that we have behind the State Farm web page, such that now Mr -- Agent Swift or Agent Knapp can go ahead and get the sales that way.

THE COURT: But the point that I'm trying to make is that by -- by connecting with Mr. Swift's domain, he will be connected with State Farm's website?

THE WITNESS: No, sir.

MR. REICHLER: Your Honor --

THE COURT: Connected with Mr. Swift's site on the website?

THE WITNESS: Yes, they would never see our website.

THE COURT: Yes. The bottom line is the same, it would be a connection from the domain to Swift's site.

THE WITNESS: That exist today. What doesn't exist today is all the connectivity behind Mr. Swift's individual site that we're going to provide for him.

THE COURT: You are going to provide for the capability of purchasing a --

THE WITNESS: Yes, sir.

THE COURT: -- a policy.

THE WITNESS: That's correct.

THE COURT: So you are going to do connectivity, but it's from domains to State Farm's website?

THE WITNESS: That's partially true, yes. You recall, Your Honor, when we used to -- you and I would

practice selecting an agent. Now the prospect can select an agent from that way from his domain, go straight to the agent and do the business there.

THE COURT: I understand. You've made that perfectly clear, perfectly clear.

Has State Farm ever considered sharing the cost of agent websites with agents?

THE WITNESS: I can't speak to that. I think we're trying to encourage our agents in many ways, and we think by providing this for them, it be some more encouragement. We could share the costs if they want to get into that kind of arrangement with us. I can't speak for them, but if I was an agent, I would prefer the agent to use all its talent and expertise do this and let me have it free.

THE COURT: Did I understand you to say that State Farm would consider the costs -- sharing the costs of connectivity to agent websites?

THE WITNESS: No. I said that's not my decision to make. I don't make those kind of decisions, but I must be missing something, Your Honor. I'm not sure why that would be a benefit to the agents, or might you're not even suggesting that.

THE COURT: Well, I merely see the difference between the domain and a website, but I understand the problems involved, and you've delineated them very clearly. All that I'm trying to explore are possible alternatives. I haven't yet made a decision upon whether any alternative to

State Farm's is feasible. But I want to look and examine closely both sides. That's a statement, that's not a question.

Mr. Reichler?

MR. REICHLER: Thank you, Your Honor. I'll ask a few questions. I hope they will add clarity.

BY MR. REICHLER:

Q Mr. Fisher, are we talking here about two different connectivities?

A I think so, yes.

Q And what exist now is for those agents who have chosen to have their own domains, that is Steve Knapp.com, State Farm has invested, I believe you said, some number millions of dollar.

A Nine, I think, 10 million something like that to do that.

Q So that the agents like Steve Knapp can have a domain and then there is a connectivity between that domain and the individual agent internet site typical of which is D-84.

A Correct.

THE COURT: Mr. Reichler, the witness has made this perfectly clear in the course of my examination.

MR. REICHLER: Yes, Your Honor. But I --

THE COURT: I don't see any need for repetition.

MR. REICHLER: I don't believe -- Your Honor, with all due respect, in the utmost respect, Your Honor, I believe from the questions the Court was asking, and I may

be wrong, Your Honor, and I apologize if I am, but I suspect that there still might be a lack of clarity here, and I just begs the Court's indulgence for another minute to attempt to be clear.

THE COURT: Well, there's no lack of clarity in anything that you brought out so far.

You make continue.

MR. REICHLER: Thank you, very much, Your Honor.

THE COURT: But I don't want needless repetition.

MR. REICHLER: And it's not my intention, Your Honor.

THE COURT: Proceed.

BY MR. REICHLER:

Q So you've established one kind of connectivity, which exist today.

Now, what you said is coming next year is a connectivity between what and what?

A Between the agents, what you call microsite on the State Farm -- you know, two or three pages down --

Q D-84.

A D-84. And all the connectivity that will allow that agent to sell insurance behind that, all the information about rates, regulations, vehicles, rating territories, billing information --

Q And closing the transaction?

A Closing the transaction.

Q That doesn't exist now?

A No.

Q Okay. And that connectivity, if we have three points, the domain, the D-84-type internet site, and then the connectivity to the apparatus or technical connectivity so that you can go from domain to the internet site of the agent, and then from there buy on line without going through State Farm's website, that's what's coming?

A That's correct.

Q And the cost of that connectivity?

A I think it's upwards of \$10 million.

Q Now, has State Farm made an estimate as to whether that cost is more or less than if an agent had had a totally independent website and wanted to establish, without going through this internet site that already exist, but he went and had a whole new website on his own, unconnected with State Farm. And then that agent asked State Farm, I want you to connect me, provide me the connectivity so people can buy on line for my website.

What kind of costs would that be for 17,000 agents? How would it compare with --

A A lot more than 10 million. I'm not sure that's what Your Honor is asking, and I --

Q That's what I'm asking.

A Yes.

Q I thought maybe of another way to answer Your Honor, if I may.

THE COURT: Well, I don't think that Mr. Reichler has brought out anything that's new, Mr. Reichler. Now, the gentleman has said that the costs of connectivity with

independent websites would be vastly more than the 10 million. I understood that.

Do you have anything new to put to the witness.

MR. REICHLER: That's all I have, your Honor. And I apologize for taking the Court's time. I had hope to be --

THE COURT: Mr. Garner?

MR. GARNER: I have one or two questions, and maybe I can clear it up with one simple question.

THE COURT: Please ask something new. I don't mean on a different subject, but a new aspect of it.

BY MR. REICHLER:

Q Did you testify, Mr. Fisher, that when a customer clicks on the domain name, say Steve Knapp.com, they are then taken to the agent's site, that's D-84?

A And perhaps other places, yes.

Q But they are taken there?

A Yes, sir.

Q Did I hear you say that they could not, from that location, get to the State Farm site?

A Well, you could back out to it, but you --

Q My question then is, if you look at D-84 --

A Is that this?

Q That is that.

-- is it not possible, in that situation, for the customer to click on any of the tabs and go directly to mutual funds or welcome or planning and learning or to go down here under State Farm insurance and go straight to a

rate quote.

A He would go -- kind of, Mr. Garner. He would go to our rate quote quoting space, but not his.

Q And if he clicked on mutual funds, it would be the mutual funds --

A Information of State Farm.

MR. GARNER: That's all I have.

THE COURT: If there's nothing further, thank you, Mr. Fisher.

THE WITNESS: You're welcome.

THE COURT: Our next subject is select agents?

MR. REICHLER: Yes, sir.

THE COURT: It appears that we will be able to finish tomorrow, that is finish the testimony.

Are you ready to go forward now, Mr. Garner.

MR. GARNER: Absolutely, Your Honor.

MR. REICHLER: May I just raise one quick housekeeping question, Your Honor.

THE COURT: Yes.

MR. REICHLER: Your Honor had given us, more -- generously, more time to provide information regarding the activities of the two Virginia insurance companies.

THE COURT: Yes.

MR. REICHLER: We have been able to get another document, which we think is relevant, Your Honor. I don't know whether Your Honor prefers to do it now or in the morning or after the close of the witness today.

THE COURT: Let's do it now.

MR. REICHLER: We just got these, Your Honor. So I apologize for not having them ready sooner. We are pulling them apart and we want to make sure we don't give the Court more paper than it needs.

Your Honor, I will proffer that it is another Bess report, the Bess (sic) report. This one is -- as a date end 2002. It concerns Loudon Mutual or Loudon County Mutual, and it states in the present tense that Loudon Mutual sells personal umbrella coverage.

THE COURT: May I have the Court's copy.

MR. REICHLER: Yes, Your Honor.

THE COURT: Is the last court exhibit? Was it --

DEPUTY CLERK: You Honor, this will be Defendant's 86.

THE COURT: No. You want to make this a Defense exhibit, Mr --

MR. REICHLER: Yes, your Honor. I am looking for the -- I apologize for the confusion. We just got these, Your Honor, and -- yes, we would like to. And I would -- let's make this a Defense exhibit, Your Honor. And, in particular, I can -- if the Court would like, I can -- on this -- the cover page should read Bess Insurance records property casualty, United States, 2002 Edition, Volume 2 K to Z.

On the third page, you will see at the bottom of the left-hand column, Loudon Mutual Insurance Company, that's where it starts, and then in the right-hand column at the bottom --

THE COURT: Wait a moment, sir. On page?

MR. REICHLER: This would be the third page of the exhibit, Your Honor.

THE COURT: Including the cover page?

MR. REICHLER: Including the cover page, yes, sir.

THE COURT: Mine has Northern Neck on page 3.

MR. REICHLER: I'm sorry, Your Honor. The wrong document was handed up to, and I apologize for that. We will correct that immediately.

THE COURT: I have what's been marked Defendant's 86.

MR. REICHLER: Yes. Let us -- I know I have the right one in my hand, and let me give this back.

Your Honor -- and I apologize for the confusion, Your Honor. But if Your Honor is looking at the same document that I physically handed up to the Court, it would be on the third printed page. And there is number of the page from the text in the lower right-hand corner, which is 2759, very, very small print, Your Honor.

THE COURT: I see that. And page 3 on what I now have in my hand is Defendant's 86.

MR. REICHLER: Yes.

THE COURT: And is referable to Loudon County.

MR. REICHLER: Yes, sir. In the right-hand column, just above that page number, under "business review" --

THE COURT: Wait a moment, sir.

MR. REICHLER: Yes, sir.

THE COURT: Yes, I see that.

MR. REICHLER: I would just read the first two sentences, Your Honor, to demonstrate relevance.

"The company provides homeowners, farm owners, fire, and allied lines and personal umbrella insurance coverages in the State of Virginia where it has been in business for 152 years.

Next sentence, and the last one I will read: "The company anticipates offering personal automobile policies in the first quarter of 2002."

Is the 2002 edition, as Your Honor can see from the front page.

THE COURT: All right.

MR. GARNER: May I be heard briefly, Your Honor?

THE COURT: Before you do, Mr. Garner, do you have anything on Northern Neck?

MR. REICHLER: At this time, Your Honor, I have nothing further on Northern Neck.

THE COURT: Yes, Mr. Garner?

MR. GARNER: We see that the company anticipates selling auto insurance. If we look at Defendant's 83, the Bess printout from this morning for Loudon County --

THE COURT: Indulge me while I get it.

Yes, I have 83.

MR. GARNER: We have a business review that does not refer to auto insurance and that does not refer to the company offering auto insurance.

THE COURT: It says on the third page, the company

has developed a personal automobile policy and is waiting to deploy it when they determine it is strategically in their best interest.

MR. GARNER: Yes, Your Honor.

THE COURT: So as of July 22, 2003, which is the stated publication date of the Bess report, apparently they had not deployed the automobile insurance coverage.

MR. REICHLER: That is correct, Your Honor. The -- D-86 shows that in 2002 they were selling personal umbrella coverage, which we had referred to yesterday.

THE COURT: That much appears to be established.

MR. REICHLER: I would also suggest, although, as Your Honor has pointed out, we have eggs in many baskets on this particular brokering issue, particularly Mr. Mueller's request, or so-called request. But on this particular aspect of it, the fact that it was public knowledge in 2002 that Loudon County or Loudon Mutual was contemplating entering the automobile insurance market is a factor that certainly enhances its status as a competitor, potential competitor, of State Farm.

Even if it was not, in fact, selling auto, it was public knowledge that it was planning to because that appears in the 2002 report.

MR. GARNER: Two brief comments, Your Honor.

THE COURT: Pardon me, Mr. Garner?

MR. GARNER: May I have two briefs comments?

THE COURT: Yes.

MR. GARNER: Number 1, the public knowledge aspect

of this is irrelevant because the State Farm individual, Mr. Whitney, who testified yesterday, said he never heard of Loudon County Mutual. So it doesn't matter. The other point is that with respect to the personal umbrella insurance coverage, as we pointed out this morning, State Farm includes that in their fire coverage.

THE COURT: Would you repeat that, please.

MR. GARNER: They include personal umbrella in their fire coverage.

MR. REICHLER: I am advised that that is not correct. What Mr. Garner said this morning about homeowners and farm owners being included, as sort of offshoots or within the general context of fire, that is true, but not personal umbrella coverage. That's not considered as such by State Farm.

MR. GARNER: We can put a witness on to testify.

THE COURT: Well, we better have some testimony on that.

MR. REICHLER: Maybe tonight we can reach a stipulation, Your Honor. We'll make every effort.

THE COURT: Well, let's put it over until tomorrow. I hope we don't have to take testimony, but as matters now stand, we may.

MR. REICHLER: We will do everything possible to avoid burdening the Court with additional testimony on this, Your Honor.

(The proceedings adjourned at 4:57 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 28th day of July, 2005.

I further certify that the foregoing 113 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 29th day of July, 2005.

OFFICIAL COURT REPORTER

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

-----x

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.

Friday, July 29, 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 9:00 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE 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
SARAH ALTSCHULLER, Esquire
Washington, D.C.

* * * * *

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WITNESSES

<u>For the Plaintiff(s):</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Steven Knapp	490	506	538	541

For the Defendant(s):

Charles Wright	544	567	575	
Gregory Fisher		577		

EXHIBITS

Admitted

For the Defendant:

Exhibit Nos. 82, 83 and 86	543
Exhibit No.	

MISCELLANY

Certificate of Court Reporter

PROCEEDINGS

DEPUTY CLERK: National Association of State Farm Agents, Inc., vs. State Farm Mutual Automobile Insurance Company., Civil Action Number 4089-02.

Would counsel identify yourselves for the record?

MR. GARNER: W. Michael Garner, Dady & Garner, Minneapolis, for the Plaintiff.

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

MR. WRIGHT: Good morning, Your Honor. James Wright, Bloomington, Illinois, for Defendant, State Farm.

MR. REICHLER: Paul Reichler, Foley Hoag, Washington, D.C., for Defendants, Your Honor.

MR. MARTIN: Lawrence Martin, Foley Hoag, Washington, D.C., for Defendants, Your Honor.

MS. ALTSCHULLER: Sarah Altschuller, Foley Hoag, Washington, D.C., for Defendants, Your Honor.

THE COURT: Be seated.

Counsel, I must communicate my opinion that on the issue of the Internet, the record in this case is wholly inadequate. And I believe this inadequacy stems from the pretrial of July 11th. The purpose of the pretrial, as we all know, is to flush out the issues and to identify the

respective positions of the parties in order to eliminate surprise at trial.

And to that end, we have, through our rules, a format whereby the parties identify their positions, their claims, their defenses, and various other requirements, as stated in the rules. And those requirements were supplemented by additional requirements that this Court imposed, in addition to the rules.

One of the mandates that the Court imposed in addition to a number of others, was that each of the parties submit a supplemental memorandum on the propriety of the defendants engaging directly in Internet sales while preventing its agents from doing so. That is set forth at the bottom of page 3 and on the top of page 4 of the pretrial order.

The Defendant responded with a memorandum justifying its entry into Internet sales, setting forth a position of total prevention of the agents engaging in Internet sales, and setting forth the reasons for that position, both legally and factually. But at trial, it developed that the Defendants did not intend a total prevention, but only a partial one. Nothing in the pretrial suggested a forthcoming trial concept of the agent domain coupled with the State Farm website.

And that concept, at the very least, ameliorates the position of total prevention. On the evidentiary side, no one explained or supplied evidence respecting the extent of the amelioration. And there was no evidence on the

value of the agent domain approach vis-a-vis, the agent website approach. There was no way for the Court to measure the extent of the partial limitation that stems from the domain approach, and to appreciate whether it is tantamount to a website approach or whether there is a yawning gap between it and the website approach.

And there's been no competent evidence -- and I underscore the word, "competent" -- evidence as to what other companies such as Allstate, which apparently has exclusive agents also, what they're doing. Plaintiff's attempt to induce evidence was rightly objected to as hearsay, and Mr. Wright, I believe, was also responding on the hearsay basis.

And this phenomenon was compounded by the absence of cost figures on what an agent website approach would involve from State Farm's point of view. Instead, the matter was covered by adjectives, a very large cost, a great cost. And the issue is not susceptible of decision by adjectives. So the problem arises, what shall we do at this point?

I don't think that we have any choice but to leave the record open on this issue and allow the parties an opportunity to supply a record that will permit a meaningful decision that is important to the litigants here. And there may have to be more discovery if additional witnesses are necessary.

The trouble, gentlemen, is that I am scheduled to leave shortly. And although I will decide all of the other

issues, I may have to remit this issue to another judge, through the presiding judge of Civil. I'll turn the issue to the presiding judge, who will, in turn, reassign it.

And if there's no objection, my successor can read the transcript of the testimony that has been given thus far, and merely take the additional testimony in order to flush out this important issue from an evidentiary standpoint. That's the way I see it.

And I'll hear counsel as to their respective positions. Mr. Garner?

MR. GARNER: Your Honor, we -- we -- at the outset let me say --

THE COURT: Pardon?

MR. GARNER: On -- at the outset, let me say that on behalf of my client, we -- we want to express our gratitude for Your Honor's very serious consideration of this issue and guidance on it. And we think that Your Honor is absolutely right. I'm frankly kind of struck by the fact that it seems that both sides missed the mark here. And I'd like a little bit of time to consider it with my clients and discuss it. But we are considering perhaps withdrawing the claim without prejudice at this point. We don't want to delay anything.

THE COURT: May I hear from the Defense?

MR. REICHLER: Yes, sir.

We thank you, Your Honor, as well, for issuing this clarification and guidance to counsel. It makes our job a lot easier to know what the -- what are the issues

that concern the Court so we can better focus on the issues that do concern the Court. We appreciate that guidance, indeed, as we have had throughout the last six to eight weeks.

We are prepared to accept Your Honor's determination of how to proceed. If Mr. Garner is offering -- and I don't understand him to be offering at this moment. So I understand that --

THE COURT: He said he was considering it.

MR. REICHLER: Considering it. I just want to be clear that I understand that.

If Mr. Garner does arrive at the conclusion that his client is prepared to withdraw the claim on Internet sales without prejudice, State Farm will go along with that. That may be the most sufficient way to resolve it. Certainly I will --

THE COURT: I think there's much merit in the position that Mr. Garner has stated. I think it would be salutary to see what happens with the agent domain approach. It may be that that will turn out to be a benefit to everybody. And if it's not, then you can make a decision where you can go from there. But, of course, that's up to the Plaintiff.

MR. GARNER: Your Honor, I fully agree with you. And we can inform the Court after the break. I just want to give --

THE COURT: Pardon me?

MR. GARNER: We will inform the Court after the

break. I do want to give my clients an opportunity --

THE COURT: I understand.

MR. GARNER: -- to discuss it and understand it before we sign off on it.

THE COURT: I must tell you that -- as an aside, I will seriously contemplate appointing an expert on this subject. And it's rare for a Court to appoint an expert sua sponte. I've only used it where I thought that the experts selected by the parties were overly partisan, and I wanted a neutral expert.

Here I would be appointing an expert when neither of the parties had appointed one. And I thought that was unfair. And that would be unfair. So I refrained from doing it, but I mentioned it to you because I was seeking edification on these issues.

We have to take evidence, evidently, on the brokerage issue. Is that necessary?

MR. REICHLER: I think Mr. Garner and I have reached an agreement, Your Honor. And I will do my best to state it. It's a verbal agreement. So Mr. Garner is here, and please forgive me if I misstate it. Mr. Garner will obviously will correct me.

We have reached an agreement on the fact that Loudon Mutual --

THE COURT: Pardon me?

MR. GARNER: We have reached an agreement on the following -- will stipulate to the following facts, Your Honor. And then we've reached an agreement on

admissibility of certain documents. Let me start with the stipulation of fact.

We have reached an agreement that Loudon Mutual, in the year 2002, was selling personal umbrella coverage policies. We have also reached an agreement that State Farm, during the year 2002 -- during the entire year 2002, was also selling personal umbrella coverage policies. And specifically, that the limitations that were in effect at State Farm on writing new fire business did not apply to the personal umbrella coverage policies.

That is to say that State Farm agents, including Mr. Mueller, were still fully authorized and permitted to write personal umbrella coverage business at the same time that Loudon Mutual was, indeed, offering those policies.

Now, on that basis, we have reached agreement that the documents offered into evidence, with respect to the activities of Loudon Mutual in 2002, should be admitted into evidence. Now, we have -- I'll wait for Your Honor. I know you're taking notes. I see you're taking notes, so maybe I should slow down.

We have also reached an agreement that the policies, or the lines of insurance offered by Loudon Mutual and Northern Neck that are referred to in the documents as homeowners or farm owners or the like, should be treated as though they were fire insurance policies during that -- during the year 2002. And that State Farm agents, including Mr. Mueller, were, in fact, not permitted to write those kinds of policies in 2002.

Did I state that correctly?

THE COURT: That is that State Farm agents were not permitted?

MR. REICHLER: Yes. State Farm agents in -- during the period that restrictions were in effect, which would be August -- this is in the record already -- August 2002 to December 2002, were not permitted to write the kinds of fire insurance policies that would be standard fire insurance or homeowners or farm owners policies which were offered by Loudon Mutual.

However, they were permitted to offer -- State Farm agents were offering, and there were no restrictions on their ability to offer, the personal umbrella coverage, which, in fact, Loudon Mutual was selling at the same time.

THE COURT: And the referable dates are August the 2nd to December -- August '02 to December '02?

MR. REICHLER: That's correct, Your Honor. So on that basis we have agreed that the documents pertaining to Loudon Mutual, particularly the best reports pertaining to Loudon Mutual's activities in 2002.

THE COURT: What are the numbers of those documents?

MR. REICHLER: Can -- can we have a minute to ascertain that so we can --

THE COURT: Yes.

MR. REICHLER: -- provide the Court with the correct information?

Thank you, Your Honor.

We will turn it over to Mr. Garner, if he has anything to add.

MR. GARNER: The only footnote I have to add to what Mr. Reichler said is, I think he said that during 2002 State Farm agents could sell personal umbrella liability coverage in Virginia is what I would --

MR. REICHLER: Yes, yes.

MR. GARNER: -- I think that was implicit. But that is not something we're agreeing to across the board, nationwide. Virginia is the only state that's relevant, but I want to make it clear.

THE COURT: Very well.

MR. REICHLER: I agree. I'm sorry I didn't mention it. I certainly intended that.

Your Honor, may I come back to this in a minute? We just want -- we're still verifying which exhibits those are.

THE COURT: Yes, we can do that at any time.

MR. REICHLER: I also have another issue, if the Court would permit me.

As I mentioned yesterday morning, when we submitted the documents authored by Mr. Sikora that he circulated to AFEs in August, 2003, and the corresponding ones from September, 2001, giving them instructions as to what they should tell the agents about, respectively, the RRRD and the PAP, I mentioned to Your Honor yesterday that we would keep Mr. Sikora here in the event the Court, upon reviewing the documents, decided that it wanted to call him

back to the stand for any reason.

Mr. Sikora is still here. And I'm not suggesting that the Court should do this. I really just want to know whether we should allow Mr. Sikora to go home, or whether the Court would like us to keep him here. And we will keep him here, if the Court would like.

THE COURT: I think we can excuse Mr. Sikora.

MR. REICHLER: Okay. Thank you, Your Honor.

THE COURT: And thank him for remaining available.

MR. REICHLER: We certainly shall, Your Honor.

Thank you.