

THE COURT: I believe we're ready for the select agent program?

MR. REICHLER: Would it be possible, so that we don't delay things, to give the Court the numbers of the documents after the morning recess?

THE COURT: Yes.

MR. REICHLER: Thank you, Your Honor.

THE COURT: Mr. Garner, are we ready?

MR. GARNER: Absolutely, Your Honor.

The Plaintiff calls Steven Knapp.

THE COURT: Mr. Knapp, again, you're under the same oath as was previously administered to you.

THE WITNESS: Yes, sir.

* * * * *

Thereupon,

STEVEN KNAPP,

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

DIRECT EXAMINATION

BY MR. GARNER:

Q Mr. Knapp, what kind of agent agreement do you have?

A I personally have the AA97 agreement.

Q And what agreement did you have before the AA97?

A That agreement would be the AA4.

Q What is the main difference between the AA3 and the AA -- I'm sorry -- the AA4 agreement and the AA97?

A The most significant disagreement or difference in the two would be the reduction in auto commissions by 20 percent, and the reduction in fire commissions by roughly a third.

Q Now, did you personally make a decision to -- were you -- strike that. Were you given the option to change from the AA4 to the AA97?

A Yes, sir, I was.

Q When you were under the AA4, did you receive any bonuses?

A Yes, I did.

Q What kind of bonuses?

MR. REICHLER: Your Honor, I'm going to pose an objection here. The -- originally, in the original complaint in this case, one of the issues that was identified was a challenge to features of the AA97 contract.

THE COURT: I can't hear you.

MR. REICHLER: I'm sorry. Do you mind if I step up? Thank you, sir.

When this complaint was filed, Your Honor, among the many -- among the list of issues, one was the AA97 contract. They were challenging certain features of it. That was dropped along the way, just as Your Honor remembers, that the issue later, after Your Honor became assigned to this case, they dropped the issue of the CRC.

The circumstances of the AA97 and the conditions of it, and the comparison to the earlier contracts, was dropped from this case. It was not an issue in this case. And they are now attempting to elicit -- let's say disparage it, in

comparison with the other contracts.

And we can put on testimony to refute that, Your Honor, but it doesn't seem it should be necessary.

THE COURT: Well, I consider this preliminary. And Mr. Garner may be heading somewhere that does bear directly on the issue. I'll give him the benefit of the doubt at this point.

BY MR. GARNER:

Q My question for you, Mr. Knapp, was that under the AA4, did you get any bonuses?

A Yes, sir, I did.

Q And what kind of bonuses did you get?

A Most of the bonus center around -- centered around the sales of life insurance, and there's some additional bonus for auto and fire profit.

Q Okay. So there came a time when, when you made the decision to change?

A That decision came in 1997.

Q And why did you decide to go from the AA4 to the AA97, which had a substantial reduction in commissions?

MR. REICHLER: Your Honor, I just want to renew the objection here. I think this is -- it's -- it may be preliminary, but he's building a record on an issue that is not in the case.

THE COURT: Objection overruled.

BY MR. GARNER:

Q Why did you make a decision to go to a contract that had 20 to 30 percent lower commissions?

A Naturally, I was very concerned about the reduction in commission, but the leadership of the company at the time suggested that we needed to streamline our efforts and try to cut company expenses, so we'd be more competitive, so we could go out and sell more product.

And it boiled down to company leadership asking us to trust them so we could move down the road together and try to work this out. And then they also indicated that the new contract was designed such that there would be plenty of opportunities to make up any deficiencies through bonuses.

Q Any deficiencies in what?

A Any deficiencies to reduce compensation.

MR. REICHLER: Your Honor, may I just ask the Court's permission to have the -- I understand what the Court's view is, but just for the record, I'd like to have the continuing objection.

THE COURT: Yes you do, sir.

MR. REICHLER: Thank you, Your Honor.

BY MR. GARNER:

Q Just to get back on track after that objection. So State Farm told you you'd have an opportunity to make up the difference in the commission?

MR. REICHLER: That's leading.

MR. GARNER: I'm just getting him reoriented.

BY MR. GARNER:

Q What did State Farm tell you to induce you to sign the
AA97?

A They asked us to follow their lead, and they also

suggested that we'd have plenty of opportunity to make up the lost commission through bonuses.

Q And in that respect, did State Farm keep its word?

A No, they did not.

Q What do you mean by that?

A State Farm came up with a new select agent program, and that took away most of my benefits that I was promised.

Q Okay. What is the select agent program?

A Select agent program is a creating of a class of new and different agents that don't have the benefits that I received under the old contract.

Q Okay. Now, is there a separate contract for select agent?

A No. Any of the contracts existing now can qualify for select agent.

Q Now, Your Honor, we do have a stipulation with respect to the benefits of the select agent program. I think it's in the supplemental pretrial.

THE COURT: Yes, I'm aware of that. That's in the supplemental joint pretrial statement.

MR. REICHLER: That's correct. And the parties agreed on most of them, but not quite. I'm not going to ask him what those are, but I would like to ask him some questions about those benefits, and what some of those items are.

BY MR. REICHLER:

Q Mr. Knapp, do agents have to apply to the company in order to become select agents?

A No, sir, they do not.

Q Okay. Now, one of the -- one of the requirements is a customer response center. What is that?

A Customer response center is an after-hours call center in which agents may forward their personal office phone number to that center so that the company can respond to very basic service requests, file claims, and a few other simple things.

Q And how does an agent participate in it?

A AA97 agents were provided that as a free service, at least for now. And then the AA3 and four agents were required to pay a fee in order to get the service.

Q And do you know what that fee is?

A I believe it's \$1.75 per household, per year.

Q Now, there's a requirement that a select agent must have at least one LSA4 or 5 staff member. What does LSA mean?

A LSA stands for Licensed Staff Assistant.

Q Okay. Now, it says LSA4 or 5. Is there a one, two, and three LSA?

A In the Illinois State we have, I believe, two, four, and five.

Q Okay. And first of all, when we say, "staff member," what does that refer to?

A That refers to an employee of the agent that is totally paid by the agent.

Q Okay. And what do the categories LSA3, four and five refer to? LSA2, means that the licensed person is eligible to bind products of auto and fire on behalf of State Farm. When you add the three --

THE COURT: To buy?

THE WITNESS: Yes. They're -- they have -- the company does give them binding authority.

THE COURT: Oh, binding authority. You mean they can sell?

THE WITNESS: Yes, sir.

BY MR. GARNER:

Q You didn't -- did you say the word, "bind," B-I-N-D, or did you say the word, "buy," B-U-Y?

A Bind, B-I-N-D.

Q Okay. So you did say --

A Binding authority, which would imply that they'd sold it.

Q Okay. And --

THE COURT: To sell what?

THE WITNESS: Car insurance and home insurance.

BY MR. GARNER:

Q Okay. And what's an LSA4 or 5?

A The LSA4 has the two lines of health insurance and life insurance, to the ability to sell and bind.

Q And what's the LSA5?

THE COURT: Excuse me. On four, it's health, life, and does it also cover auto and home?

THE WITNESS: Your Honor, the numbers designate the number of lines of insurance that can be sold. The LSA2 is for two lines, auto and fire, and the LSA4 adds an additional two lines of life and health, to get a total of four. That's how they come up with the four.

BY MR. GARNER:

Q And what's an LSA5?

A An LSA5 gives the employee additional authority to carry on activities outside of the office that would be relevant to inspecting a home, taking photos of a home outside of the office, or even transacting a sale outside of the office.

Q And what --

THE COURT: The others can only do it in the office?

THE WITNESS: If you only have a two or a four, you can only perform those activities in the office; that's correct.

BY MR. GARNER:

Q What is required for a staff member to obtain one of these licenses?

A Well, in order -- in most states, in order to be able to do any of those functions legally, one must have to secure a sales license through that individual state. What State Farm has done in order to get the LSA certification, is provide a fairly rigorous curriculum that the staff person must go through and take tests on and pass in order to get the designation.

Q Are you saying then, that the staff member must be licensed by the State and pass an exam from State Farm?

A Yes, sir.

Q Okay. In your experience, is having an LSA4 or five staff member, something that all agents can achieve?

A Not in every situation. Smaller agencies would have a

difficult time doing that.

In many instances, an agent does all the binding themselves, and they simply have a staff person available to answer the phone, take claims and file, accept payments. And there's no licensing requirement to do any of that.

Q In the stipulation, there's a requirement for a sale of a certain number of life insurance policies with 80 percent persistency.

What does 80 percent persistency mean?

A Persistency, my example, if I were to sell a life insurance policy today, the customer would have to pay premiums on that policy for a full two years for it to be deemed to be persistent at the beginning of the third year.

Q Okay. So is that a realistic goal for all agents?

A It would not be realistic for all agents, no, sir.

Q And why is that the case?

A Agents who service predominantly urban areas, inner city areas, or perhaps some lower income rural areas, would find it difficult to get customers to keep up the payments, as well as customers who live in more affluent suburban areas.

Q Do you have personal experience with people in less affluent areas?

A Yes, I do. One of my -- my service communities are both reasonably wealthy, and one that is very impoverished.

Q And what area is that?

A The more impoverished area would be East St. Louis, Illinois.

Q And what is your experience with customers there who

buy life insurance? Do they tend to have 80 percent persistency?

A I can't tell you the exact number, but it is certainly significantly less than those in the affluent areas.

Q Now, has select agent program always used the sale of life insurance as a criterion for the quality requirement?

A No, sir, they did not.

Q What has been used in the past?

A Originally, the program was based on the profitability of auto and fire.

Q Okay. And is that something that all agents could achieve?

A No, sir.

Q And why is that?

A Well, once again, urban markets are more susceptible to things such as car thefts, far more susceptible to things such as arson fires. And those are all included in a loss report. And because of that, it is much more difficult for an urban agent to achieve a consistent profit.

And the requirement was that you had to maintain a consistent profit in three of five years, in order to qualify.

Q There's a requirement for a business plan. Is that a uniform requirement?

A No, sir, it is not.

Q And why not?

A Each individual zone is permitted to come up with its own requirements for what should be contained in a business plan. And even the individual agency field executives are

permitted to negotiate the content of a business plan with different agents. And that provides an opportunity for less consistency, which means one agent would be -- could be asked to be required to supply more than another.

Q Okay.

THE COURT: Are you saying that there are no objective standards?

THE WITNESS: There are no objectives with standards, and the agency field executive is not required to forward those plans on to any other company official.

BY MR. GARNER:

Q To your knowledge, is there any national set of requirements for what a business plan has to be?

A I'm not aware of any, no.

Q And to your knowledge, does anyone above the AFO level review the content of business plans submitted by agents?

A My understanding of the process that the AFE has to certify to their immediate supervisor that the plan has been received. They're under no instructions to forward a copy of that plan or any of its contents.

Q You're not a select agent, are you?

A No, sir, I'm not.

Q Are you eligible to win the same awards or prizes that you did in the past?

A No, sir, I'm not.

Q Is the select agent program a bonus or reward program?

A I believe it not to be a bonus program.

Q Okay. Now, in the past --

THE COURT: What is your reasoning for that?

BY MR. GARNER: Okay. Let's go on to that.

THE WITNESS: Your Honor, historically -- and I have been an agent now for 23 years -- bonuses have always been tied to the production of a particular product, generally over a short period of time, certainly no more than a year. Sometimes we'll have a promotion that will last 30, 60, or 90 days. And if you achieve a certain level of production, then you receive a bonus.

What I believe makes this program not a bonus, is that it pulls in all sorts of other categories of things into the system.

THE COURT: You mean besides productivity?

THE WITNESS: Yes, sir. Would you like me to state those?

THE COURT: Yes.

THE WITNESS: For example, only a select agent would be entitled to have the services of what we call a life specialist. And that would be a person supplied by the company that comes into the agent's office to help them with the sale of life insurance.

Only a select agent is allowed to sale certain products, such as the Phoenix Life products and the AON commercial professional liability products. Only a select agent is allowed to receive the Internet sales transfers, or state to state transfers, or block assignments.

And then only select agents are allowed to receive the benefits, such as co-op advertising.

BY MR. GARNER:

Q Mr. Knapp, in the past, did State Farm publish publicly bonuses or awards that it had awarded to agents?

A No, sir.

Q How did it memorialize awards that it gave to agents?

A Generally, with a plaque or some sort of certificate, framed certificate that would be hung on the agent's wall if they chose to do so.

Q And how many of your customers would actually come to your office to maybe see that award?

A Maybe 25 percent over the course of a year. We run mostly a mail order business.

Q Does State Farm now publish the -- publish the status of select agents to the public?

A Yes, sir, it does.

Q And how does it do that?

A It does it in a display Yellow Page ad.

Q Okay. You have there, I believe, a binder of exhibits. There's Plaintiff's exhibits.

A Yes, sir, I do.

Q And I would ask you to turn to Exhibit 19, Plaintiff's Exhibit 19.

A Okay.

THE COURT: Indulge me, please.

MR. GARNER: Sure.

BY MR. GARNER:

Q And I'll focus your attention on the first question and answer where it says, "What is the State Farm corporate

sponsored display Yellow Pages program?"

What is the answer there?

A The answer is the State Farm corporate sponsored Yellow Pages program promotes the select agents and provides the non-select agents with an opportunity to expand their Yellow Page advertising at a cost of \$500 per directory.

Q Okay. Let's turn to Plaintiff's Exhibit Number 22. Plaintiff's Exhibit 22. It's in the same book you were just looking at.

A I'm sorry.

Okay. I'm there.

Q And what is that?

A Those are some photocopies of some selected pages from my local telephone book.

Q Okay. Let's -- the first page we see there is the cover of the Yellow Pages, right?

A That's correct.

Q Okay. Let's turn. And we have two pages reproduced on the left and the right. Can you explain what those are?

A On the left, you will see what State Farm refers to as it's Yellow Page trademark ad, and every agent is included in that. Agents have to participate a little bit to pay for some of that costs.

Q Okay. And what is there on the right with the heading, "State Farm. We live where you live," and it has some pictures of agents?

A That is the Yellow Page display ad. That would be the ad that is free to select agents, but non-select agents would

have to pay the \$500 fee.

Q Okay. And that -- is that what Exhibit 19 refers to?

A Yes, sir.

Q Now, so in this case, what is it that NASFA is asking the Court to do?

A I believe State Farm is -- NASFA is asking the Court to prohibit the discrimination of practices among agents so that all agents are entitled to receive the same benefits of service, equally.

MR. GARNER: Nothing further at this time.

THE COURT: What -- do we have an itemization of what our Plaintiff considers discriminatory, and what in particular?

MR. GARNER: Your Honor, we -- we consider all of the -- the requirements and the benefits to be discriminatory, because they're not equal -- made equally.

THE COURT: All of the -- all of the five requirements?

MR. GARNER: Are discriminatory, and all of the -- and the benefits are not made equally available.

THE COURT: Your attack is really to the entire program?

MR. GARNER: That's exactly right, Your Honor. because no single part of the program is available without all the rest of it.

THE COURT: Proceed.

MR. REICHLER: Thank you, sir.

CROSS-EXAMINATION

BY MR. REICHLER:

Q Good morning, Mr. Knapp.

A Good morning, Mr. Reichler.

Q I hope you're doing fine today.

A Doing well.

Q Good. You look more like that picture every day.

A I'll get there.

Q Unfortunately, this is our last day of trial. But I hope you continue to look better and better.

A Thank you.

Q I would like to ask you first, to turn to, I believe it is Plaintiff's Exhibit 3. It's the -- if I'm correct, it's the AA97 agreement to which you are a party.

A Okay.

Q That's Plaintiff's 3, so it would be the black binder.

A Uh-huh.

Q And I would like to focus your attention on Section 2D, please.

THE COURT: For the purposes of the record, this is the AA97 contract?

MR. REICHLER: That's correct, your Honor.

THE COURT: And the section?

MR. REICHLER: Two -- Roman Numeral two, capital letter D, as in David.

THE WITNESS: And we are on tab 3?

MR. REICHLER: I believe we are.

THE WITNESS: And we are on section 2B?

MR. REICHLER: D. D, as in David.

BY MR. REICHLER:

Q Would you read that, please.

A Each company reserves the right to fix and determine the amount, extent, and condition of any bonuses, awards, prizes and allowances.

Q So that -- you agree, don't you, that State Farm has the right, has the discretion, to determine what bonuses to provide, and what the amount should be, the extent, and the conditions or criteria of bonuses, awards, prizes and allowances, correct?

A I would answer yes, with an opportunity to explain the answer.

Q You can certainly explain.

A Mr. Reichler, when I signed the AA97 agreement, I had the advantage over you in that I had 15 years of experience with State Farm in which to weigh the content of that agreement. And through that entire 15 years history, bonuses were not contingent upon giving up anything else in replace of that.

I believe I testified earlier, bonuses were for a limited amounts of period of time, based solely on production, and had no other tie-in features associated with them. So when I signed the new agreement and saw that that was essentially the same, I had assumed that the practice would be essentially the same in the future.

Q I understand that, but -- and I'm not asking you at this moment, about the select agent program. I'm merely asking you about what would be, in your opinion, a bonus program.

A Yes, sir.

Q And if it -- if a program would be a bonus program --

A Yes.

Q -- would be accurately described as a bonus program, the company has the right to decide whether to establish such a program. And if it does establish such a program, it has the right to determine the amount of the bonus or any award, or prize, or allowance that is given. And it has a right to decide what the criteria are or conditions for receiving any such bonuses, awards, prizes or allowances, correct?

A I would agree. The contract speaks for itself.

Q Well, and we certainly agree that the contract speaks for itself, but I'm asking for you to give me a yes or no answer to that question.

A Well, yes. But I would have to qualify it, sir. And I think my previous qualification goes to that.

I know in my own mind what a bonus is, and I believe that the select agent program is not that.

Q I understand, Mr. Knapp.

THE COURT: You've already stated that position. Let's move on, Mr. Reichler.

BY MR. REICHLER:

Q Now, I would like to ask you to comment on certain deposition excerpts that are in evidence in this case.

A Certainly.

THE COURT: Are we using your deposition book now?

MR. REICHLER: No, we're not, Your Honor. We are using the Defendant's deposition excerpts, Your Honor. I do

not -- these next two or three questions relate to deposition excerpts that are in the record, but they are not from his deposition. But I'm going to ask his opinion.

THE COURT: And your book would be entitled, "Defendant's deposition designations and expert excerpts"?

MR. REICHLER: Yes, sir.

MR. GARNER: Your Honor, I'm going to object to this line of questioning. Asking his opinion of somebody else's deposition?

THE COURT: I don't have a question yet, Mr. Garner.

MR. GARNER: Very well. I will withdraw it.

BY MR. REICHLER:

Q And I want to start with the deposition of Mr. Swift, who at the time was the president of NASFA and spokesperson for NASFA.

You would agree that in 2003 -- when -- April of 2003 --

A I would concede he was the president. I don't concede he was a spokesperson.

Q He was a representative of NASFA as president of NAFSA?

A I'll concede he was president, yes, sir.

Q And I'm going to ask if you agree with his testimony at page 230 of his deposition, which I will --

A Where might I find it?

Q I'm going to read it to you, and ask you if you agree with the statements, if it's correct or incorrect.

MR. GARNER: I'm going to object unless the witness has the deposition excerpt for the deposition in front of him.

MR. REICHLER: I'll be happy to do that, Your Honor.

THE COURT: Very well.

MR. REICHLER: If Your Honor will just give us a minute, I'll be happy to do that.

MR. GARNER: Excuse me. I need to have either that document or the deposition.

MR. REICHLER: Certainly. I'm happy to look along with you. If you like, you can use my copy with me.

THE COURT: What page did you reference?

MR. REICHLER: Your Honor, I'll be reading from page 230 and 231 of.

THE COURT: I don't see them. Mr. Swift?

MR. REICHLER: Yes.

THE COURT: 230? I go from 226 to 331.

MR. REICHLER: We have it right here, Your Honor, in our book.

THE WITNESS: I'm a little lost. Let me catch up with your numbering system here, Mr. Reichler.

MR. GARNER: Just wait for the Court, Mr. Knapp. If you will have some patience.

MR. REICHLER: Your Honor, I think I can explain the problem. The deposition excerpts in our -- the deposition excerpts that we submitted to the Court are organized by subject matter, which we thought would be most convenient to the Court.

So if the Court looks under the Select Agent tab, I believe the Court will find the relevant pages of Mr. Swift's deposition. And the excerpt is page --

THE COURT: I have select agent program, David Swift.

MR. REICHLER: Right. And particularly the excerpt that goes from 230, line 9, to 231, line 16, Your Honor.

THE COURT: And I repeat, I don't have 230 -- 231. I have 331, 332, and the page before 331 is 226.

MR. REICHLER: Your Honor, I apologize.

THE COURT: I'll be happy to surrender this book for another one. Do we have another one, Mr. Martin?

MR. MARTIN: Well, Your Honor, I just gave Mr. Knapp the last edition, if you will. But if I might, Your Honor, you can find the same testimony in our book --

THE COURT: Wait a moment. I may have another one.

MR. REICHLER: I apologize for the clerical error, Your Honor.

May I just ascertain, Your Honor, if Mr. Knapp has the page?

THE WITNESS: The page number is --

BY MR. REICHLER:

Q 230, 231.

A Like His Honor, I go from 226 to 331.

Q All right. Well, these -- the correct pages have been formerly designated. Perhaps we copied the wrong page in the excerpt. But we did designate the correct pages. So we can use the deposition.

THE COURT: I'm in the same quandary.

MR. REICHLER: I am embarrassed, Your Honor, and I apologize. But we did designate these pages, so we can use the deposition transcript itself, and read from those pages. We

will furnish one to the Court, and Mr. Garner has one, and we'll furnish one to the witness.

And we will correct the binder, Your Honor. I apologize.

THE COURT: Very well.

MR. MARTIN: If I may, Mr. Knapp, you should have before you a binder with all of the deposition's full transcript of the Plaintiff's witnesses.

THE WITNESS: This?

THE COURT: I can't find such a book. I have a book, "Defendant's submission of the deposition transcripts of Plaintiff's witnesses at trial."

MR. REICHLER: That would be it, Your Honor. Mr. David Swift's deposition would be in there.

THE COURT: 330 and 331?

MR. REICHLER: 230 and 231, Your Honor.

THE COURT: Yes, I have it.

MR. REICHLER: And again, I deeply apologize for the clerical error.

BY MR. REICHLER:

Q All right. I will read Mr. Swift's testimony to you, Mr. Knapp, and you can follow along. And then I'll ask you if you agree with it. The questions are by me and answers by Mr. Swift.

"Q So select agent status is really another form of bonus that the company provides to certain agents?

Mr. Swift's answer was: That's correct. They put them in the phone book or they'll give them listings in the phone

book that the regular agent won't get, and he'll be there as a select agent.

"Q So again, it's the company's choice to provide bonuses to certain agents, even though it's not contractually obligated to do so?

"A Yes.

"Q And you would agree that State Farm has the right to provide bonuses to agents that meet certain criteria, even though it's not obligated to do that?

"A Yes.

"Q And by providing these bonuses to certain agents, based on meeting certain criteria, whether it's sales or other criteria that the company establishes, the company isn't violating your rights?

Answer -- and he answers with a question:

"A They're not violating my rights?

"Q That's right.

By providing -- and my question:

"Q Bonuses to others?

"A That's fine, yeah.

"Q It's not?

"A No, it's not.

"Q It's not violating?

"A It's not violating.

THE COURT: Isn't that a question of law?

BY MR. REICHLER:

Q I am asking whether the violation of rights -- I agree with you, that's a question of law, but I wanted to read the

whole excerpt.

My question that I'm going to put to Mr. Knapp will not be on than part of the excerpt.

THE COURT: The question is whether he agrees with it.

MR. REICHLER: Well, I -- may I put the question? It will be whether he agrees with the earlier part of it. I will frame a question that does not call for a conclusion of law, Your Honor, if I may be permitted.

THE COURT: All right. Well then, you introduced this matter by saying that you wanted to read an excerpt of Mr. Swift's deposition --

MR. REICHLER: I did, Your Honor.

THE COURT: -- and see if this witness agrees with it. And you've read a portion where the witness was asked a question of law and gave an answer to the question of law.

MR. REICHLER: Your Honor, I read more that I needed to, Your Honor. So if I may ask a question, then I'm certain I can ask a question that does not call for a conclusion of law. I understand the Court's concern, and it's obviously correct, and I will accommodate it.

BY MR. REICHLER:

Q Now, let's look at the first part of this, starting on page 230 at line 9 and going to line 15.

So select agent status is really another form of bonus that the company provides to certain agents?

"A That's correct. They put them in the phone book or they'll give them listings in the phone book that the regular agent wouldn't get, and he'll be there as a select

agent.

Q Do you agree with Mr. Swift's testimony? Do you agree with it?

MR. GARNER: Object, Your Honor. This is an improper attempt to impeach Mr. Swift, or it's improper cross examination. He can ask him if it's a bonus program or not a bonus program, but I don't think it's proper to ask him to give an opinion on Mr. Swift's testimony.

THE COURT: The questions could be put abstractly without identifying Mr. Swift.

MR. GARNER: That's correct.

THE COURT: So you're saying that you wish Mr. Swift's reference to be removed from the question? Is that what you were saying?

MR. GARNER: It certainly -- it -- he certainly shouldn't be examining him on the deposition.

MR. REICHLER: I'm not, Your Honor. May I be heard on this?

THE COURT: Yes.

MR. REICHLER: Mr. Swift, we've already established, and he has established, was president of NASFA at the time. The president speaks for the association. He's claimed to be a representative. In fact, he was allowed to introduce what otherwise would be hearsay testimony about what people told him on the ground that he acquired this information as president of NASFA.

He's the highest officer of the corporation. He's speaking on behalf of NASFA. Mr. Swift is not a party to this

suit. It's NASFA that's the party. He was testifying as president of NASFA, which is the Plaintiff here.

Mr. Knapp is a member of the board. He is president-elect now. And I think I'm entitled to say, here's what your president said. Is this right or wrong? And the last thing I'm trying to do is impeach Mr. Swift. I'm not.

THE COURT: I realize you're not.

MR. REICHLER: Yes.

THE COURT: You were perfectly delighted with Mr. Swift's testimony.

MR. REICHLER: We believe it to be the truth. And I believe I'm entitled to ask him if he accepts or rejects the statement of the highest officer of his own country -- sorry -- of his own association which has brought this suit.

THE COURT: I'll overrule the objection.

You may answer if you're able to.

BY MR. REICHLER:

Q My question is, I'm talking about the portion -- the question and answer -- I'm talking about the answer to my question, which appears at lines 12 to 15 on page 230 of Mr. Swift's deposition. Do you agree with Mr. Swift?

A Specifically, lines 12 through 15?

Q Yes, but since they're in answer to a question, you have to take the question into account as well. So I'm asking you to look at 9 to 15 and tell me if you agree with Mr. Swift's answer.

A I don't agree with the answer in the context of the question. I believe -- I think the answer is reasonably

correct, but it certainly wouldn't be the answer that I would give to that question.

Q Let's -- I think that's enough. Not of my cross, but of dealing with this document.

Sorry, Mr. Knapp. You don't need that book anymore, if you want to make some room for yourself, that's perfectly alright. Make yourself comfortable, please.

You decided to pass on becoming a select agent because you did not see any benefit to yourself, and you saw that it had perhaps, some significant costs, correct?

A Are you reading from a deposition?

Q I'm entitled to ask the questions here. With all due respect --

A I'm sorry.

Q -- Mr. Knapp, I ask the questions, you just give the answers and we'll get through this a lot quicker.

A I'm sorry, Mr. Reichler. Would you ask it again?

Q You decided to pass on becoming a select agent because you did not see any benefit to yourself, and you saw that it had perhaps, some significant costs?

A The select agent program -- I guess I need to answer yes or no. I'm sorry.

Q Yes.

A The answer to that question would be yes, but I would like to explain it a little bit.

Q Certainly.

A I can recognize that as a statement that was provided in the deposition. And the context of that would be that the

deposition was taken coming up on two years ago, and it covered a time frame from one to three years prior to that.

The select agent program has evolved substantially over that five-year period. In the initial stage --

MR. REICHLER: Move to strike as nonresponsive. It was why he decided not to become a select agent. It doesn't matter how it evolved after he made his decision, Your Honor.

THE COURT: Yes, it's not responsive in an explanatory sense. He has answered the question.

MR. REICHLER: I believe he has, Your Honor. Thank you, sir.

BY MR. REICHLER:

Q And your specific objection to participation in the select agent program was the requirement that you submit a business plan?

A That would be correct.

Q And the reason you didn't want to submit a business plan -- the reason you objected to it was because you didn't want to share with anyone else, the specific techniques that you have learned over your career, as to how to -- how you secure business, correct?

A That's correct.

THE COURT: He so testified before, in this proceeding.

MR. REICHLER: Yes.

BY MR. REICHLER:

Q Now, you testified today that there were no objective standards for a business plan?

A That is correct.

Q Now, you yourself, did not go through the process of preparing or submitting a business plan, did you?

A Once or twice my agency field executive asked me to write no more than a sentence or two, to fulfill a requirement that she was under, to get as many business plans collected as possible. And I accommodated her with a business plan that simply stated: I will try to write as much insurance as I can in the next year.

Q So that's all you did? Other than that, you made no attempt to submit a business plan, correct?

A I made no attempt to submit a formal business plan that I believe was required under the select agent program. She did not ask for that business plan to be submitted in the context of the select agent program.

Q Mr. -- I'm not criticizing you. I'm just asking you a question.

A Yes, sir.

Q You did not submit a business plan, correct?

A I did not submit a business plan under the select agent program, yes, sir.

Q And therefore, you did not go through the process that takes place with agents after the business plan is presented under the select agent program, correct?

A I'm not certain I understand the question.

Q Well, if you didn't present a business plan under the select agent program, you don't have any first-hand experience as to what happens between an agent and an AFE after a business

plan is presented to the AFE by the agent, under the select agent program, correct?

A Well, that would be correct.

Q Now, I would like to turn your attention, please, to Exhibit Plaintiff's 75, please.

Have you found Exhibit Plaintiff's 75, Mr. Knapp?

A Yes, sir, I have.

Q Great. This is a -- this was introduced by NASFA, of course. Can you identify it and tell us what it is?

A It's appears to be a description of the 2004 select agent business plan as provided over the State Farm Internet.

Q And this is the portion of the Internet to which agents have access, isn't it?

A I believe so.

Q The document speaks for itself. So I'm not going to ask you to tell us what's in the document, Mr. Knapp, but I am going to point your attention to the bullet point at the bottom of the page, the last bullet point.

Would you read that, please?

A Tools and materials are available to assist agents in developing their business plans. These are located on the agent planning process website, located on agents on line. And then it provides a website.

Q And you're familiar with that website, aren't you?

A That particular website?

Q Yes.

A No.

Q How many times have you visited it?

A I don't know that I ever have.

Q So you never -- you never tried to find out what tools and materials are available to assist agents in developing their business plans, correct?

A No, not from this website. Through discussions with other agents.

Q All right. But you never accessed or attempted to access this website to see what tools and materials State Farm made available to assist agents in developing their business plans, correct?

A I would have no reason to.

Q It calls for a yes or no answer.

A The answer would be yes.

Q So whatever you know about this is what you heard from other agents, I think you just testified to?

A That's correct.

Q Well, I think it wouldn't surprise you, Mr. Knapp, to find out that we did visit that website. And I would like to show you what was found.

THE COURT: What number is this?

MR. REICHLER: We're going to mark it for identification, Your Honor. And if you would like to have it -- it's in two parts. And it's all from the same website. But for convenience sake, we would like to have it marked as one exhibit.

THE COURT: Well, let's mark it A and B.

MR. REICHLER: A and B. So whichever number A, B --

DEPUTY CLERK: Eighty-seven.

MR. REICHLER: Defendant's 87-A and B.

THE COURT: Which one is A?

MR. REICHLER: A, I presume would be the one on top:
Triple click and enter your name.

THE COURT: For the purpose of the record, that's the
smaller number of pages.

All right.

BY MR. REICHLER:

Q Let's just flip through 87-A. And you'll see that --
where it says, "Table of Contents, various subjects. Vision of
my business, analysis of my agency, personal goals, agency
goals, budget action plans -- in parenthesis (detailed review
and evaluation).

Then if you -- in all of these headings in bold, you can
click on, correct?

MR. GARNER: Object, Your Honor. The witness
testified he's never been to this site. So there's nothing he
would know -- I was talking about this document, but
Mr. Reichler --

THE COURT: The question is withdrawn.

BY MR. REICHLER:

Q I would -- let's look at 87-B, Mr. Knapp. And I'd
like to give you a moment to look at it so that you have a
chance to give me an informed answer.

Take a look at B, look through the pages. And I'll tell
you my question in advance so you can bear it in mind when you
look through it. I certainly don't want to be unfair to you in
any way.

And my question is, looking through this, wouldn't you say this gives you -- that this would give an agent, who wanted to prepare and submit a business plan, quite a bit of guidance and assistance on how to submit a business plan under the select agent program, that would be acceptable to State Farm?

A That's not the way I would view the document at all, sir.

Q And why don't you view it that way?

A By the year 2004, I would have been a State Farm agent for 22 years. I've won several of the prestigious life insurance sales awards. The last time we had an auto production award, I lead my agent field office in auto production.

I know what I'm doing. I think I'm a reasonably competent business person. I understand the applications of technology in the way I use my office. I don't need State Farm's idea of a business plan to help me guide my independently owned, operated, and controlled business.

Q Well, you may not need the guidelines from State Farm. You may very well be capable of submitting an acceptable business plan without help from State Farm. I have no problem with that.

And is that your testimony?

A Yes, sir. And I believe that is my right under the agreement.

Q Nobody disputes that.

But my question is: Perhaps other agents, not as distinguished as yourself, would find this document very useful

in providing guidelines, templates, sample marketing plans, establishing your marketing budget, how to use this worksheet.

Don't you think that other State Farm agents might very well find this a set of very useful guidelines?

MR. GARNER: Objection. Calls for speculation.

THE COURT: Sustained.

MR. REICHLER: Mr. Reichler should put the document in with his own witness.

THE COURT: Sustained.

MR. REICHLER: I shall. And I appreciate the offer, and I will do that.

BY MR. REICHLER:

Q You testified that under the -- under your AA97 contract, participation in the CRC has been provided to you by State Farm free of charge, correct?

A It is -- it was an enticement to sign a new agreement, but I'm not aware of any contractual provision, that it's to always be provided.

MR. REICHLER: That wasn't my question, Mr. Knapp.

THE COURT: Yes, would you please listen to the question carefully and respond to the question.

THE WITNESS: I apologize.

The answer is yes, Mr. Reichler.

BY MR. REICHLER:

Q Thank you. Now, you testified, I believe -- and please correct me. I don't have the transcript in front of me, so I apologize if I misstate your testimony. I'm sure you'll

tell me if I do.

I believe you testified that agents who operate still under either the AA3 or the AA4 agreement, I think you said they are required to pay a fee for the CRC. Was that your testimony?

A Yes.

THE COURT: They are, or are not?

THE WITNESS: They are required to pay a fee for their CRC if they are an AA3 or AA4.

BY MR. REICHLER:

Q But that's only if they choose to participate in it, correct? Because agents under the AA3 and AA4 contract are free to decide not to participate in the CRC, correct?

A That's correct, if I could offer a brief explanation.

MR. REICHLER: It's up to the Court.

THE COURT: Yes, you may. And you may do it without requesting it.

THE WITNESS: Yes, I'm sorry.

It is something that, yes, they can pay for. But it would go to my contention that that negates the idea that this is a bonus program. We've never had, in the history of State Farm, a bonus program where you have to provide something back to State Farm.

MR. REICHLER: I move strike that as nonresponsive, Your Honor.

THE COURT: No, I'll let the answer stand.

BY MR. REICHLER:

Q Now, just to be clear, with whatever explanation, State Farm does not require AA3 or AA4 agents to participate in

the CRC, correct?

A That's correct.

Q You testified that the profitability or loss rates are no longer taken into account in determining the quality criterion of the -- for the select agent program, correct?

A That is my recent understanding, yes.

Q And do you know -- I don't know if you do, but do you know when profitability and loss rates ceased to be a component of the quality criterion for membership in the select agent program?

A I do not know.

BY MR. REICHLER:

Q I'm sorry to do this, but we want to accommodate Madam Reporter who didn't get your answer.

Do you know when such concepts of profitability or loss rates ceased to be a component of the quality criterion for becoming a select agent?

A No, sir, I do not.

Q I believe that you testified -- and again, please correct me if I err in reciting your testimony. Again, I don't have the benefit of a transcript. I tried to take notes as best as I could.

I believe you testified that the select agent program took away most of the benefits I was promised?

A That is correct.

Q Would you turn to Plaintiff's Exhibit 3, please? This is your agreement with State Farm, correct?

A Yes, sir.

Q And it's the AA97 agreement?

A Yes, sir.

MR. REICHLER: Exhibit Plaintiff's 3, Your Honor.

THE COURT: Yes.

BY MR. REICHLER:

Q And when did you sign this agreement?

A I signed it in August of 1996.

Q There was no select agent program at that time, of course?

A That's correct.

Q Now, bearing in mind the testimony which I recited back to you, which you have just reconfirmed, my question to you, Mr. Knapp, is: Where in this contract are the benefits that were promised to you that were taken away from you as a result of the select agent program?

And you can look through the contract paragraph by paragraph, if you want to. I want you to tell me where were you promised a benefit that was taken away from you by the select agent program.

A I believe it was the paragraph that you recited yourself earlier, Mr. Reichler, regarding the bonuses? I'm not sure --

Q Do you want me to help you find it? I think it's 2D. Is that the paragraph you're referring to?

A I'll look at that and see if that is it.

That would be one of them. And then I'm looking for the paragraph which discusses co-op advertising.

Q I can point you to that if you would like me to.

A That would be helpful.

Q Section Roman Numeral one, capital letter, F. It's 1-F. Uses -- well, it uses the word, "advertising." I don't want to characterize it as anything else. You can tell me if that's the section you're referring to. I don't want to put words in your mouth.

A Yes, sir.

Q Is that the section you're referring to?

A Yes.

Q Any other benefits that you were promised in this agreement that were taken away from you as a result of the select agent program? Or is that it?

A I would be very reluctant to conclude that there isn't something else I couldn't find in a careful reading of the entire agreement. But we can talk about those two things if you wish.

THE COURT: What was the first again, sir?

THE WITNESS: One D -- I'm sorry. 2D, Your Honor.

BY MR. REICHLER:

Q The --

THE COURT: That would be bonuses?

THE WITNESS: Yes, sir.

MR. REICHLER: And he also identified 1-F, Your Honor, which is on the previous page, in the right-hand column, if that would be helpful.

BY MR. REICHLER:

Q Well, Mr. Knapp, you're familiar with this contract, aren't you; it's your contract?

A I believe so, yes.

Q And you've obviously looked it over in preparation for your testimony, right?

A Yes, sir.

Q And you've made serious accusation against State Farm, that they promised you benefits in this contract and then they took them away from you?

A Yes, sir.

Q Okay. So apart from the benefits that you claim, or the -- what you're alleging were benefits that were promised to you in 2-D and 1-F, tell us what other benefits in this contract were promised to you but taken away from you by State Farm because of the select agent program --

THE COURT: He's saying that he doesn't want to take the time to read the entire document. He thinks there are others. That was his response.

MR. REICHLER: May I ask him to take a couple of minutes and read it? These are serious charges.

THE COURT: Yes.

MR. REICHLER: I'd like to ask for an instruction, Your Honor, that the witness not make eye contact with his counsel when the question is pending.

THE COURT: I can't instruct him not to look at his attorney, sir.

THE WITNESS: Mr. Reichler, I don't have a benefit of a way to record this information, but I'll try to recite an additional paragraph and perhaps it would help you find it.

It would be the paragraph that says that I'm in complete

control of the activities of my office.

BY MR. REICHLER:

Q Well, I wouldn't agree with your character -- I'm willing to help you, Mr. Knapp, but by helping you, I want it clear that I'm not agreeing with your characterization of the paragraph.

A No, I take that back. Because your question was narrower than that.

Q Okay. But you already identified 2-D and 1-F. And I'm not -- that's in the record. I want to know what other benefits were promised to you in this contract that were taken away from you by the select agent program.

A In a preamble, there would be the benefit in Paragraph 4.

Q What benefit are you referring to?

A May I read the first sentence?

Q Yes.

A State Farm makes available to all agents, the experience --

Q I'm sorry. Oh, Paragraph 4?

A Paragraph 4, yes, sir.

"State Farm makes available to all agents the experience and technical knowledge acquired and developed over the years with respect to selling, underwriting, and servicing insurance.

We will provide you, through our personnel, with information and guidance as to operation, conduct, and financial management of your agency. And from time to time, we

will designate specific employees to advise you regarding your activities."

And can you read the rest of -- I would explain that part when the time comes, if you want me to.

Q Anything else?

A I believe the very next paragraph, which would say, "The companies and the agent expect that by entering into this agreement and by full and faithful observance and performance of the obligations and responsibilities herein set forth, a mutually satisfactory relationship will be established and maintained.

Q What specific benefits were, other than the ones you mentioned, without agreeing to your characterization as benefits -- other than what you have mentioned, what specific benefits were promised to you in this agreement that were taken away from you as a result of the select agent program, if any, and apart from the ones you've mentioned?

Is that it?

A Well, no. I'm going to have to continue reading up through the preamble.

THE COURT: Mr. Reichler, I think that the amount of time consumed in this line of questioning is disproportionate to its value.

MR. REICHLER: I will take heed, Your Honor.

BY MR. REICHLER:

Q Let's take a look at Section 1-F, Mr. Knapp. And would you read the first sentence of that?

A "We will advertise, provide promotional materials, and

participate in the cost of your advertising in accordance with policies determined from time to time by us."

Q I just said the first sentence. You're free to read as much as you want, but.

A I'm satisfied.

Q You complied with my request, and I thank you.

This doesn't promise you a benefit, does it? It just says that we, meaning State Farm, will do these things in accordance with policies determined from time to time by us?

MR. GARNER: Your Honor, I object. He's arguing with the witness about a document that is clear on its face. The witness has testified as to what he think it means.

THE COURT: I'm going to permit a limited amount of this, Mr. Garner, very little amount of it. I don't intend to have a contractual debate in the form of a cross-examination of a witness.

MR. REICHLER: I understand, your Honor. And I -- I will keep it very limited. The witness has said that State Farm made promises and then broke them because of the select agent program. Now --

THE COURT: I told you, you can continue, but it's going to be in a limited amount.

MR. REICHLER: Yes.

BY MR. REICHLER:

Q What were you promised -- what benefit were you promised here that was taken away from you?

THE COURT: I think the question has been asked and answered. Advertising, he said.

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

THE COURT: Mr. Garner?

REDIRECT EXAMINATION

BY MR. GARNER:

Q Mr. Knapp, at the time you were considering the AA97 contract, did State Farm make any presentations about that contract to you?

A Yes, sir, they did.

MR. REICHLER: Your Honor, again, I just want to be clear that my continuing objections -- I have a continuing objection to questions about -- general questions about the AA97 agreement, Your Honor.

THE COURT: Very well.

Continue, Mr. Garner.

BY MR. GARNER:

Q And were any promises made to you in those presentations?

A Yes, sir.

Q What promises were made in those presentations, wholly apart from what was in the contract?

MR. REICHLER: I object to that, Your Honor, on relevance grounds.

THE COURT: This is redirect. I don't recall any questions put by Mr. Reichler on conversations between the witness and the representative of State Farm.

MR. GARNER: Your Honor, he asked a line of questions that he just concluded with about promises that were made in the contract.

THE COURT: In the contract, but nothing prior to the contract, which were presumably integrated into the document under the parole evidence rule.

MR. GARNER: Well, Your Honor, I would like to show that there were promises made prior to the contract to induce him to enter into the contract, that were separate from the contract, that would not be integrated.

THE COURT: I don't think that this was gone into on cross-examination.

MR. GARNER: Very well. I'll move forward, then.

BY MR. GARNER:

Q Mr. Knapp, with respect to the issue of profitability as a criterion under the select agent program -- that used to be criterion -- does an agent have control of profitability?

MR. REICHLER: Excuse me. I had raised no questions like that. I just asked him when the -- when it ended.

I object.

THE COURT: Sustained.

BY MR. GARNER:

Q Mr. Knapp, what bonus programs existed before the AA97?

MR. REICHLER: Objection. I didn't ask him about any bonus programs other than the select --

THE COURT: Well, it may come under the head of bonuses taken away from him. That was gone into, so the objection is overruled.

MR. REICHLER: Actually, may I be heard, Your Honor?

I didn't go into that. It was Mr. Garner who went

into that on direct.

THE COURT: Well, I thought you did also, sir.

BY MR. GARNER:

Q Mr. Knapp, what bonus programs existed before the AA97?

THE COURT: No, that wasn't the question. What was -- you said what bonuses did he have before that were taken from him?

MR. GARNER: Very well.

THE WITNESS: Prior to the AA97?

BY MR. GARNER:

Q Yes, that existed before.

A Mostly life insurance bonuses and bonuses tied to auto and fire profitability.

Q And how much could you make in a year from those bonuses?

A It would certainly be the value of a life insurance trip, several thousand dollars.

MR. GARNER: Nothing further at this time.

THE COURT: There's nothing further.

Mr. Reichler?

REXCROSS-EXAMINATION

BY MR. REICHLER:

Q These bonuses that you received before were before the AA97 contract went into effect, correct? That was while you were an AA3 or four agent, correct?

A They were available before and after.

MR. REICHLER: No further questions.

THE COURT: You may step down, Mr. Knapp. Thank you.
We're going to take the mid-morning recess now and
resume at eleven o'clock.

(Whereupon a recess was taken from 1045 a.m. until
11:00 a.m.)

THE COURT: Mr. Reichler, I expect counsel to be in
the courtroom before I take the bench.

MR. REICHLER: I deeply apologize, Your Honor.
Mr. Garner just told me that they are not calling their next
witness. So I was out trying to find our witness to make sure
that we could call him right away. I apologize for that.

THE COURT: Nevertheless, I expect counsel to be in
court before I enter.

MR. REICHLER: Yes, sir.

THE COURT: Mr. Garner.

MR. GARNER: We have no further witnesses at this
time.

THE COURT: Mr. Reichler.

MR. REICHLER: Thank you. Once again, I deeply
apologize. Something I take pride in is being here before the
Court is, and I -- sir, I meant no disrespect.

THE COURT: Very well, sir. Let's proceed.

MR. REICHLER: Before calling my witness, Your Honor,
Your Honor had graciously allowed me time during the recess to
be able to identify which documents per agreement would be
moved in with relation to this Loudon Mutual, Northern Neck
issue, and they are Defendant's 82, 83 and 86.

THE COURT: Pardon me?

MR. REICHLER: If Your Honor will recall that this morning --

THE COURT: Yes. What documents?

MR. REICHLER: Defendant's 82, 83 and 86.

THE COURT: Is there an objection?

MR. GARNER: No, Your Honor.

THE COURT: Let the 82, 83, 86, each being Defendant exhibits, be admitted into evidence.

(Defendant's Exhibit Numbers 82, 83 and 86 was admitted into evidence.)

MR. REICHLER: Thank you, Your Honor. I believe Mr. Garner has a statement to make. I would like to turn the podium over to him.

MR. GARNER: Your Honor, after conferring with our clients, we are ready to dismiss without prejudice the Internet claims, and with no objection from State Farm.

MR. REICHLER: No objection.

THE COURT: The motion is granted without objection. The challenge to the Internet activities of the Defendants, it is hereby dismissed without prejudice.

Will you present an order, Mr. Garner?

MR. GARNER: Yes, Your Honor.

THE COURT: Mr. Reichler.

MR. REICHLER: Thank you, Your Honor. We would like to call at this time Mr. Charles Chuck Wright, or recall Mr. Charles Chuck Wright.

THE COURT: And you're testifying under the same oath, sir, as previously administered to you.

Thereupon,

CHARLES WRIGHT,

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

DIRECT EXAMINATION

BY MR. REICHLER:

Q Good morning, Mr. Wright.

A Good morning.

Q Does State Farm have any programs by which agents can earn awards or bonuses?

A Yes, we do.

Q Can you name them, please?

A At the corporate level, we have the ambassador travel program; we have the chairman's circle, president's club. We have the select agent program, and one more that I'm trying to think of; legion of honor.

Q What are the awards or bonuses that agents receive through the ambassador travel program?

A The award for the ambassador travel program is incentive travel, and it's annual based on life production and a combination at the agent's option of other financial services.

Q What are the awards and bonuses for the chairman's circle program?

A The chairman's circle is primarily a recognition and an invitation to an annual business meeting each year.

If I might back up, I should say we generally have about

4,000 people who qualify for the ambassador travel program, and somewhere in the neighborhood of six to 800 qualifiers for the chairman's circle.

Q What do they have to do to win the awards or bonuses for the chairman's circle program?

A The chairman's circle is based on multiple line production.

Q And what are the awards and bonuses for the president's club?

A The president's club is primarily --

THE COURT: We have been using the term ambassador, I believe.

MR. REICHLER: I think it's a different program, Your Honor. He said ambassador travel. He said chairman's circle. The president's club is a different award and bonus program, I believe.

THE COURT: I see. All right.

THE WITNESS: Yes. It may be a little bit confusing, Your Honor, because at one point in time the ambassador travel program was called the millionaire travel program. It was renamed several years ago.

The president's club is primarily recognition. An agent does receive a ring the first time he or she qualifies. There's an annual listing provided of all the president's club members, and there's a dinner at national convention. This is comprised of the top 50 agents, production-wise, in each of the various lines of insurance and products that we sell.

BY MR. REICHLER:

Q And you mentioned legion of honor. What are the rewards or bonuses and what are the criteria?

A Primarily recognition, and it's based on quality. It's an award that's been around for more than 25 years and there are various stages in the award. An agent qualifies for five years is a bronze tablet and silver scroll. A golden triangle at 15 years and silver scroll once they qualify for a 20-year period of time.

Q And you mentioned the select agent program, what is the select agent program?

A The select agent bonus and award program is a program that was developed about five years ago. It has five criteria for being selected for being given this award. A business plan --

THE COURT: I think we have a stipulation that began in 1998. Is there --

MR. REICHLER: There is a stipulation, Your Honor, as to the criteria and the benefits, but not as to -- I don't believe there is a stipulation as to the year.

THE COURT: Bear with me, please.

MR. REICHLER: I would be surprised if -- if Your Honor didn't have it exactly on the head, so.

THE COURT: Don't put pressure upon me.

Paragraph 31 on page 28, starting at approximately 1998 State Farm instituted a new program known as select agent program.

MR. REICHLER: Thank you.

BY MR. REICHLER:

Q When was the first year that any agent was actually made a select agent?

A The first year of qualification for the program was the year 2000.

Q And why was the select agent program adopted?

A It was adopted --

Q Let me ask you before that a foundational question. I'm sorry. Let me withdraw that question and asked you if you played any role in the adoption of the select agent program?

A Yes. I was very much involved in the adoption of the program and led the group of people considering the various criteria for the award.

Q Then can you tell us -- now I can ask the question that I should have waited to ask.

Why was the select agent program adopted?

A Well, it was referenced to the year 1998. Interestingly, that was the year that it really all began. In the summer of 1998, prior to our national conventions that were going to be held in the fall, there was a lot of speculation going on among the agency force as to what would be announced and what would be talked about at convention.

And one of the big rumors that was out was that there was going to be some sort of a buyout announced by the chairman, that we were going to announce in some fashion that agents who were age 65 or older would receive some kind of compensation if they wish to retire. And try as we might, we weren't able to put down this buyout rumor.

Q Was it true?

A No, it was not true.

And one day the president chairman received a letter from an agent, and it said, Dear Ed, and in effect, we don't need a buyout. What we need is a buy-in from our agents. And I thought this represented well the kind of spirit that we needed, because we needed a shot in the arm at that point in time from our agents. We needed more commitment from our agents in the kinds of things that were happening in the marketplace in the direction that we needed to go. And I encouraged him to use that line as part of his convention speech.

Q When you say convention, do agents attend this convention?

A Yes, the agency convention.

And so he did.

Q I'm sorry to interrupt, but generally speaking, how many agents attend these conventions?

A Well, we invite all of our agents, and generally we have an attendance of about 80 percent or better. So there are various sessions, but somewhere in that mix there are more than 13,000 agents that would be attending the convention.

Q Please continue.

A So he used that term. He said to the agents, I don't think we need a buyout; what we need is a buy-in. And of course he explained, but he got a huge cheer, a huge cheer, from the agents. And I went home from the meeting thinking about that, saying, I just can't let go of this. There is something here.

So I gathered all of my staff together in my conference room one day and I wrote up on the chalkboard "agent buy-in," and proceeded to ask them, in their opinion, what it meant and what they felt the criteria should be if we were talking about agent buy-in.

We had a list of more than 25 different criteria up there when we finished the meeting. I challenged the group to go out and to visit with agents and talk with people and see if there was anything, in fact, to this whole notion of buy-in, and whether or not we could somehow or another capture it in a set of reasonable criteria that agents would agree to and accept. And I, in fact, used every opportunity that I had that year, 1999, to talk with agents about it and got a lot of input on it. Discarded some of the original items that we began talking about.

Added items. When I listened to agents, added, for example, the business plan after a group of agents told me, hey, agents are running a multi-million dollar business. And any agent who is running that kind of business should have an annual plan.

And gradually this came together in a list of five criteria. We had a lot of debate and discussion, a lot of input from agents on what this should be called, and eventually settled on five criteria and it became known as the select agent program. It was introduced in the fall of 1999, and became effective for the first qualification year in 2000.

MR. REICHLER: Your Honor, to expedite this process, I would ask permission to be able to hand the witness a copy of

the supplemental joint pretrial statement, the additional stipulations on the select agent program so that we can go through the items that are mentioned here that are already established as a stipulation as to what the criteria are and what the rewards are.

THE COURT: I don't know what the worth of the stipulation is after this witness's testimony.

MR. REICHLER: Well --

THE COURT: The dates that he's given are in conflict with the stipulation that I read into the record. He apparently is not impressed with the force and efficacy of a stipulation.

MR. REICHLER: Your Honor, I don't know that he was aware of that particular stipulation.

THE COURT: That has nothing to do with your request. I'm just making an observation for the record. You may proceed on that basis.

MR. REICHLER: Yes, Your Honor.

THE COURT: That has nothing to do with the year, but this is another stipulation --

MR. REICHLER: Yes.

THE COURT: -- Mr. Wright.

MR. REICHLER: State Farm is prepared to abide by the stipulation. That is the stipulation that we made and we are certainly not attempting to contradict that. If we made a stipulation, we live with it. That's all.

THE COURT: Perhaps my remark was somewhat facetious, because I was referring to the fact that a stipulation previously had no effect upon the witness' testimony. I don't

know what effect another stipulation will have upon the witness' testimony.

Let's find out.

MR. REICHLER: I have writing on the back of that. Well, ignore the handwriting on the back page. Just don't look at it, because that's not part of the document. Just the stipulation itself.

THE COURT: Let me get my copy.

Mr. Martin, would you hand it to the --

MR. REICHLER: Your Honor, I have part of my closing argument on the back of this one, so I would prefer just reaching in and getting another company.

THE COURT: I am trying mightily to get to that point.

MR. REICHLER: We will. We are prepared to do that. Let's just hand it up.

On that subject, Your Honor, we expect to be able to complete our presentation on this issue by the lunch break, and -- which would leave only one issue for the afternoon and each side has only designated one witness for that.

THE COURT: Let's proceed.

BY MR. REICHLER:

Q Mr. Wright, I have handed you this document so that we can address the criteria. I will ask you questions about the criteria, but we don't have to identify what the criteria were because they are stipulated to.

THE COURT: Well, we don't know, and perhaps we ought to find out from the witness. The criteria that are listed there, Mr. Wright, are they the criteria that were listed there

originally when the program started?

THE WITNESS: Yes, Your Honor.

THE COURT: Proceed.

BY MR. REICHLER:

Q Mr. Wright, since I don't have my copy in front of me, would you tell me what the first criteria listed is and I will address my questions to that.

A The select agent program current criteria are --

Q Just read the first one.

THE COURT: CRC.

MR. REICHLER: CRC. Thank you.

BY MR. REICHLER:

Q You have described the process by which the criteria were established. Now I'd like to ask you one by one what the reasoning was behind each of the criteria.

Why was the CRC made one of the criteria?

A The customer response center was made a criteria because it was vitally important, we believed it was vitally important for agents to have a 24-hour presence in the marketplace, to have both after-hour and weekend coverage for their businesses.

The competition that we were up against was increasingly using and advertising this kind of coverage, and in fact, some of their coverage sort of pointed derogatorily at the kind of system that we had, saying when you want your agent, he is probably out on the golf course. So we needed to make that a part of any standard that we were trying to set for our agents.

MR. REICHLER: Excuse me just for a moment.

Shall I proceed, Your Honor?

THE COURT: Yes.

BY MR. REICHLER:

Q At the time that participation in this CRC was included as a criterion to become a select agent, what percentage of State Farm agents were already participating in the CRC?

A Over 90 percent.

Q And that was right at the beginning?

A Well, the customer response center actually came into being kind of coincident with the new contract, and so it had grown at that point to about 90 percent.

Q New contract being the --

A AA97.

Q The second item listed, if I remember correctly, is licensed staff?

A Is licensed staff, yes.

Q Why was having a licensed staff member one of the criteria?

A We had talked a lot with our agents about the importance of having licensed staff, both from a compliance standpoint and also because, increasingly, the scope of the business going on in an agent's office was such that one professional person couldn't get it all done. So we encouraged agents to have not only staff, but to professionalize their staff, and a marker for that was certainly having licensed staff.

Q When you say staff and you say licensed staff, can you

explain the difference?

A Well, it's possible that an agent could hire someone to simply answer the telephone or do filing. And in fact, many of the kinds of staff people that were in agent's staff, in the employ of the agents, were those kinds of individuals for many years. And we had to make a change as the laws in various states changed and as the insurance regulators began to demand that people who are dealing with people, dealing with customers with regard to applications and questions and giving rates, had to actually be licensed.

Q And previously only the agent himself had to be licensed?

A Well, theoretically it would be the agent only. In many instances, these non-licensed people performed those kinds of duties for many years until the insurance regulators cracked down on it.

Q What percentage of State Farm agents already had licensed staff members?

A I can't give you an exact number on that, but I recall looking at the figures and being surprised by the numbers of agents that didn't have a licensed staff person at that point in time.

Q Why was -- is the third criterion quality?

A The third criteria is quality, yes.

Q Why was quality a criterion for becoming a select agent?

A Well, in trying to put together a program that would be representative of the best of what we were looking for in

our agents, we felt it was very important to establish quality criteria. And indeed, the agents that we talked to strongly suggested this. Many of them suggested that the program, the Legion of Honor program, would be a marker for that. From the beginning, however -- well, we had a quality criteria. Profit alone was never the sole criteria for quality.

Q How difficult was it, in your opinion, for State Farm agents to satisfy the quality criterion?

A Well, there were at that point in time 65 to 70 percent of our agents who were already meeting the Legion of Honor designation criterion. So we believed that it was certainly something attainable by the vast majority of our agents.

Q The next criterion on the list?

A The next criteria was product availability.

Q What did you mean by product availability?

A Really, what we were talking about there was that the agent either was licensed or certified in all products or agreed to refer clients to another licensed or certified agent. There was never anything put in writing on that. The agent didn't have to sign anything. There was no partnering that the agent was obligated to be a part of. It was simply a good-faith commitment, if you will, on the part of the agent to make all of our products available either through himself or by referring a customer who wanted to buy one these products to another State Farm agent.

THE COURT: Was there any product, except the mutuals, that a State Farm agent was not licensed to sell?

THE WITNESS: There were some of our agents, Your Honor, who were not certified with our bank products. So there were -- well, most our agents were certified for the bank. There were a few agents that were not. So that would have covered our banking products as well.

THE COURT: What banking products were there?

THE WITNESS: We were in the process back in 2000 of rolling those out, but they are today home loans and car loans, principally in that arena. And we have CDs and checking accounts and other savings accounts as well.

THE COURT: Were they in existence at the time of the -- at the time that the select agent program was launched?

THE WITNESS: In some states. The bank had just gone into operation at about that point in time. We had not yet gotten approval from the bank regulators to make our products available in all of our states.

And the final one of the these --

BY MR. REICHLER:

Q I'm not there yet.

You could probably do a better job at conducting the direct examination than I, but it falls upon me to do it, Mr. Wright.

What about the variable life insurance policy?

A Well, the variable life insurance policy --

Q Is that another one that you had to be licensed or registered in order to --

A You didn't have to be registered. You have to be registered -- be a registered representative in order to sell

variable life insurance, but it was not a requirement of the select agent program. Of course, that's something that would have been covered under the concept of the referral as well.

Let me just stop and make sure I've made myself --

THE COURT: Wait a moment, sir. We just want you to answer questions.

BY MR. REICHLER:

Q I was just really following up on His Honor's question, because His Honor had asked you to identify those products of State Farm that one had to be registered or licensed in order to offer, and I didn't hear you mention variable life insurance. So I just posed the question, what about that.

Is that one that also you had to be licensed or registered to be able to offer to the public?

A Yes, you did.

Q That was my question.

What's the next criteria?

A Business plan.

Q Why was having a business plan one of the criteria for becoming a select agent?

A I mentioned earlier that this was one that really came at the suggestion of agents that I talked to. And after considering it, I agreed. I talked with a lot of agents about it, many who had not done a business plan previously. It seemed to me and to others that were considering this plan to be a good idea to implement as part of this, so we did. We made it one of the requirements.

Q Was there a procedure in place for an agent to submit a business plan and get it approved?

A There -- as part of this new program, realizing that many agents had not done a business plan, we made a lot of material available through the agency field executive that would help an agent in putting a business plan together. But that wasn't required, they could do their own if they chose.

Q What was the -- what guidance, if any, did the AFO or AFE provide the agents in preparing --

THE COURT: I'm sorry.

MR. REICHLER: I apologize, Your Honor.

BY MR. REICHLER:

Q What was the role of the AFE in connection with the preparation of the agent's business plan?

A They assisted the agent as requested. If the agent wanted help in putting a plan together, they were there to provide that assistance.

Q Was it difficult for agents to get a business plan approved under this program?

A No.

Q Do you know of any agents who failed to become select agents because the business plan they submitted was rejected or deemed unacceptable?

A No, not at all.

May I add a comment?

Q Certainly.

A This was -- this was an area where as we announced it, there were a lot of comments from agents, and quite frankly

some griping about it. But as people got into it, many of these same agents called me back and told me that they had found it to be a good exercise. And many people learned from this and were surprised at what they had discovered in putting a plan together.

Q No agent ever failed to become a select agent because his business plan was deemed inadequate?

A No.

Q Was there a risk that an agent's business plan might be disclosed to other State Farm agents in the same AFO?

MR. GARNER: I'm going to object to the lack of foundation. He's speculating on what might have happened to seven -- to thousands of different business plans.

THE COURT: I will sustain the objection to the form of the question.

BY MR. REICHLER:

Q Mr. Wright, do you know whether AFE's maintained the confidentiality of the business plans submitted by the agents under their purview, or whether these were either made public or shared with third parties?

A AFE's were told to receive these in confidence, and I never once received a complaint from any agent complaining that that confidentiality had been breached.

Q Taking all five criteria as a whole, do you consider it to have been difficult for State Farm agents to satisfy them?

A I think the -- no, I don't. Sorry.

Q Why not?

A Well, because I saw the number of people who qualified for the program, 75 percent-plus of our agents began qualifying for the program almost immediately.

Q Why didn't you raise the bar higher, then?

A Because we wanted an inclusive program. We wanted something that the vast majority of our agents could reach.

Q Did State Farm ever deny, withdraw or reduce any benefits to agents who did not become select agents?

A No. Everything that we -- that we gave to people who were select agents, all of the awards that were given to them were things that we were contractually allowed to do and were above and beyond things that are promised in the contract.

Q Did State Farm ever withhold from any agents who did not become select agents, anything to which they were entitled under their agent's agreement?

THE COURT: This was asked of Mr. Wright in his first appearance.

MR. REICHLER: I will withdraw the question. Thank you. Thank you for reminding me. I wish I had your memory, Your Honor.

BY MR. REICHLER:

Q On what basis did State Farm establish a select agent program?

A On a contractual basis as allowed in our contract.

Q Where in the contract does it allow this?

A Well, I believe --

Q If you want to look at the contract, you may.

A If you'll tell me where that might be.

Q Well, there are three different forms of the contract and they are in the black binder, Plaintiff's Exhibits 1, 2 and 3. And they have been previously identified, Plaintiff's Exhibit Number 1, being the AA3 contract, Plaintiff's Exhibit 2 is the AA4 contract, Plaintiff's Exhibit 3 is the AA97 contract.

A Can I simply read from the AA3?

Q You certainly can. You can read from whichever one you want.

A In that agreement it's in 2C, and I believe the wording is identical in each of three agreements.

Q Would you read it, please.

A 2C, "Each company reserves the right to fix and determine the amount, extent and conditions of any bonuses, awards, prizes, and allowances."

Q Would you take a look just to make sure that that same language is in Exhibit P-4, which is the AA4 agreement?

THE COURT: I will take notice that it is,
Mr. Reichler.

MR. REICHLER: Yes, it is.

BY MR. REICHLER:

Q Would you please take a look at the AA97 and just tell us where, if at all, it is in the AA97 contract?

A In the AA97, it's 2D.

Q Is it the same language?

A Same language.

Q Mr. Wright, was there a relationship --

THE COURT: Are we finished with criterion now?

MR. REICHLER: We are, Your Honor.

THE COURT: May I ask the gentleman a question with respect to criterion?

Prior to the partner agency program, were there instances where agents were called upon to refer clients?

THE WITNESS: Well --

THE COURT: I'm asking you that because it's my understanding that the partnership agent program was initiated after the select agent program.

THE WITNESS: That's correct, Your Honor.

THE COURT: But you testified that all of these criteria were applicable from the start.

THE WITNESS: In the select agent program.

THE COURT: Yes.

THE WITNESS: That's right, but the select agent program was never where we speak of product availability. We weren't envisioning any agent partnering up at that point.

THE COURT: I understand that. That's what I'm asking you. In other words, there were occasions before the partner agent program where agents referred customers to other agents, I take it?

THE WITNESS: We were asking for a good faith -- a good-faith commitment on the part of agents to do that. It was really an awareness kind of thing. We were saying, hey, we have all of these products, and if you don't want to sell them --

THE COURT: My question calls for a yes or no answer.

THE WITNESS: Well, sir, I'm just trying to make sure

that we're all understanding --

THE COURT: I'm not sure that I got a yes or a no.

THE WITNESS: Will you ask me your question again?

THE COURT: Give me a yes or no first, and then you may explain.

THE WITNESS: All right. Yes.

THE COURT: You may explain.

THE WITNESS: We were trying -- we were trying to establish in agents' minds at that point in time, with the select agent program, that we had all of these products available and, in fact, that there was a growing list of products available with the banking and mutual funds that were just coming. And we wanted agents to be aware of the fact that if they weren't interested or licensed to sell these products, that we still hope that they would refer and make those products available to other customer. And it was nothing more than that. It was a good-faith commitment.

THE COURT: Proceed.

MR. REICHLER: I am I have -- Your Honor actually asked the very questions I was anticipating asking. I have no further.

THE COURT: Thank you, Mr. Reichler.

Cross examination, Mr. Garner.

CROSS-EXAMINATION

BY MR. GARNER:

Q Mr. Wright, just to clarify, is it your testimony that co-op advertising is a prize, bonus, or award?

A Co-op advertising is covered in the contract. Yes.

Q Mr. Wright, it's yes or no.

A Yes.

Q Yes, it is a prize, bonus, or award?

A In some context, yes.

Q And is it your testimony that the ability to broker products of other companies such as Phoenix or Aon is a prize, bonus, or award?

A No.

Q Is it your testimony that the eligibility to receive block assignments or Internet leads or Internet referrals is a prize, bonus, or award?

A No. May I explain on that one?

Q Sure.

A That's a benefit. There's nothing in the contract that stipulates that anyone is entitled to block assignments or any other kind of assignments. So in granting it to a particular group of people, we are not taking away any right that they are entitled to under the agreement.

Q But your words is, it's a benefit?

A I think that best describes it, Mr. Garner.

Q And is the -- is the eligibility to receive mutual fund referrals a benefit, as opposed to a prize, bonus, or award?

A I would characterize that as a benefit, yes.

Q Another point of clarification. Do you still have that stipulation in front of you?

A I do.

Q Under the criteria for -- under the criteria there is

item C, which is "Solicit 40 net paid life insurance policies or create 25 new life households." And then it goes on and talks about life insurance.

That was not the quality criterion when the program was began, was it?

A No.

Q It was a profitability criterion?

A No, it really wasn't. We said, to begin with, in the first year of qualification that an agent could qualify by having three out of five years Legion of Honor, but Legion of Honor already had at that point in time built into the program a means of qualification other than by profit.

Q At some point after that, did it change to a profitability requirement?

A No. It changed from the three out of five to the kind of thing that you're talking about here. There were shifts during the years, Mr. Garner, but as I pointed out, profit alone was never a sole criteria for the quality leg of the select agent award.

Q Was the QRP point requirement ever a requirement -- a criterion for becoming a select agent?

A Yes.

Q What does that mean?

A Well, QRP is an acronym for Quality Results Profile. And there were a number of ways in which agents could earn those QRP points. Profit was one of those, but there were other activities in lieu of profit that allowed an agent to get the QRP points as well.

Q Are you familiar with the changes that were made to criteria during 2004?

A I'd rather that someone else address those, because at that point in time I was beginning to give over the responsibilities to Mike Davidson, my successor, and he was involved more heavily in the establishment of the 2004 criteria.

Q I understand that you'd rather do you that, but you had some familiarity with the changes, I take it?

A I would be glad to try to answer that, but I'm just trying to provide that qualification.

Q Do you recall that the QRP criterion was dropped in 2004 as a requirement for select agent?

A Yes.

Q Do you recall that the reason for it is that the company found that there were 106 agents who would gain select agent certification if the requirement was only the life criterion?

A Yes, I do, and may I say something about that?

Q I will let Mr. Reichler go for that on redirect.

MR. REICHLER: Your Honor, I believe the instruction --

THE COURT: There's a difference between explaining an answer and adding a codicil. The codicils will go to redirect.

MR. REICHLER: I understand, Your Honor.

BY MR. GARNER:

Q So the company changed the criterion and dropped that QRP requirement so that -- because there were roughly 100

agents who couldn't get into the program because of that?

A That's true. May I explain now?

Q Yes, you may explain.

A I think, Mr. Garner, this is a very good example of how State Farm operates, not only on this program, but -- I mean on all programs, but this program as well. Because this was first brought to my attention by an agent who indicated that he would have qualified if that had been the requirement. He made a strong plea to us, we looked at it, we found that there were more than a hundred agents in the same situation he was and that's why we made the change to the program.

THE COURT: This is precisely what I mean by relegating the subject matter to redirect. It doesn't qualify the yes or no. It's partisan in nature.

BY MR. GARNER:

Q And for how long, prior to that change, had the QRP requirement been a part of the program?

A I believe for several years.

Q So for all of those years, those agents couldn't get in?

A I would have to go back and look at the precise qualification.

Q If you know?

A Even the definition of QRP points changed somewhat during that period of time.

Q Mr. Wright, the question, and maybe I didn't phrase it as a question, but the question is: For all those years until it was changed, those agents who couldn't meet the QRP

requirement were excluded from the program; isn't that right?

A With the qualification I've added, that's true.

Q Can you answer it yes or no?

A I can't give a fair and honest answer by simply saying yes or no, because as I've pointed out, the definition of QRP points changed during that period of time.

Q So it's impossible for you to say yes or no?

A Not without reviewing the definition of how an agent receive QRP points during that period.

MR. GARNER: I don't have anything further for this witness.

THE COURT: Redirect?

MR. REICHLER: No, sir.

THE COURT: Mr. Wright, what is meant by the Product Availability Category? That's in initial caps, initial capital letters; Product Availability Category.

THE WITNESS: That, your Honor, is the area that we are talking about in terms of referring, either being licensed to sell or being willing to refer to others who are licensed to sell, products that the agent didn't wish to handle himself.

THE COURT: There's a sentence in one of the e-mails, Counsel, that makes reference to select agents program. What is the -- wasn't that Plaintiff's 91?

MR. GARNER: Plaintiff's 91.

MR. REICHLER: No. Plaintiff's 91 does not deal with select agent program. I think you may be referring to Defendant's 38, your Honor.

THE COURT: No, I don't think so. I am dealing with

the e-mails, and one of the e-mails make reference to the select agent.

MR. REICHLER: Oh, I thought that was the partner agent program. I understand.

THE COURT: So that you are able to follow --

MR. REICHLER: I understand.

THE COURT: -- turn to Defendant's 91 -- Plaintiff's 91, Mr. Wright. And midway in, there's an e-mail from Lori Welty, W-E-L-T-Y. How come that says -- from Lori Welty to Lori Welty, it says.

Maybe to expedite this, Mr. Wright, let me hand you my copy. It's the yellow highlight. Will you read it into the record, and then if you are able to explain it to us, particularly the material in the parenthesis, would you please do so? First read it into the record.

THE WITNESS: Okay. The yellow section, Your Honor?

THE COURT: Yes, the highlighted.

THE WITNESS: The highlighted section is -- reads as follows, "Also the referral program will help you meet the product availability category (mutual funds and Phoenix/series 6) for your select agent status if you choose to use the referral program."

THE COURT: Are you able to explain that?

THE WITNESS: It appears, Your Honor, as though one of the people in the field, and I really don't know Lori Welty, and it doesn't show me here what her title might be, but it appears in some fashion or another that she is trying to connect up the two programs. She mentions product availability

and then she mentions select agent status and she's connecting up the two.

THE COURT: What does Phoenix have to do with the product availability category?

THE WITNESS: Well, Your Honor, in order to sell -- in order to represent to Phoenix, one of the requirements is that the agent be a registered representative. Because a lot of the products that Phoenix handles are in the variable category, which would require the variable license or require the registered representative status. So she is mentioning that because that was a requirement of that representation as well.

THE COURT: May I see it, please.

THE WITNESS: Sure.

THE COURT: And the Series 6, what does that reference to?

THE WITNESS: The Series 6 is that license that an agents get in order to sell either mutual funds or variable products. It's an NASD license.

THE COURT: I have no further questions.

MR. REICHLER: Thank you, Your Honor.

THE COURT: Mr. Reichler.

MR. REICHLER: Thank you, sir.

REDIRECT EXAMINATION

BY MR. REICHLER:

Q You mentioned earlier in your testimony, and certainly in response to His Honor's questions, that regarding the product availability criteria for becoming a select agent was the good-faith commitment by the agent to refer to other agents

customers who were interested in products that he or she was not able to offer, correct?

A That's correct.

Q That was your testimony?

A That's correct.

Q So that if an agent participated in the RRRD and choice a referral agent, who was a registered agent, to whom the first agent would refer those customers, who the first agent could not service, would that be enough to satisfy the product availability criterion?

A In that category, certainly.

Q I refer you back to the document from Mr. Welty and ask you to look at that.

THE WITNESS: Your Honor, I have never managed to locate that in --

BY MR. REICHLER:

Q Is this statement, that the referral program will help you meet the product availability category, is that a way of saying that if you became -- if you participate in RRRD, you will satisfy the product availability criterion?

A Well, I didn't read the rest of this, but if one backs up a paragraph, they are mentioning registered referral database, and it would appear that there is a connection between these two.

Q To the extent that she is saying that if you voluntarily participate in the RRRD, which means that you are appointing a referral agent, you will satisfy the product availability criterion for select agents status?

A And that would be correct.

Q What percentage of registered representatives -- of those agents who are registered representatives were also select agents?

THE COURT: This wasn't covered in my questioning, sir.

MR. REICHLER: Your Honor, I believe it's linked to your question. You were asking about -- well, if Your Honor says no, then the answer is no. I will --

THE COURT: I don't believe it is. Let's move on.

MR. REICHLER: I will withdraw the question, and I have no further questions.

THE COURT: Mr. Garner.

MR. GARNER: Nothing further.

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

MR. REICHLER: My final witness on this subject is Mr. Gregory Fisher.

* * * * *

Thereupon

Gregory Fisher,

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

DIRECT EXAMINATION

BY MR. REICHLER:

Q Good morning, Mr. Fisher.

A Good morning.

Q Let me begin by asking you to turn to Defendant's

Exhibit 38, which is in the white binder of trial exhibits.

A I have it, I think.

THE COURT: Indulge me a moment.

MR. REICHLER: Certainly, Your Honor.

THE COURT: Thank you.

BY MR. REICHLER:

Q Do you have it, Mr. Fisher?

A Yes, sir.

Q Can you identify this document?

A This is a document, I believe, it looks like a note from Mr. Ron Vietto to Mr. Ron Vietto, having to do with an e-mail that Mr. Greg Zimmerman sent to Mr. Mike Davidson.

Q Can you tell us what this is about?

MR. GARNER: I'm going to object unless there is some foundation for the witness having seen it before or knowing what it is or having received it.

THE COURT: Yes, let's have a foundation.

BY MR. REICHLER:

Q Mr. Fisher, in March of 2004, what was your job?

A It was the same job I have now, the same position I have now, agency vice president, corporate headquarters.

Q And would the criteria for the select agent program be within -- have been within your purview in 2004?

A Not under my direct administration, but within my purview, yes.

Q Are you aware of any changes that were made in the criteria for the select agent program during the year 2004?

A Yes.

Q And what changes were made in the criteria for the select agent program in 2004?

A I believe one of the categories were changed retroactively to the beginning of 2004, and that brought in the criteria of the life component under the quality criteria.

Q Which criterion are we talking about? Which are the criterion for the select agent program?

A The quality criteria.

Q And how was the quality criterion changed -- well, when -- first of all, when in 2004 was the quality criterion change, and if Exhibit D-38 helps you, you are free to look at it.

A I think the suggestion to the -- Mr. Mike Davidson was made, obviously, on March 8th, asking to change the criteria -- well, maybe not asking to change the criteria, but suggesting that if we changed the criteria, what would happen to it if we went to this criteria that is exemplified in this memo.

Q And was the criteria changed in accordance with the recommendation in this memo?

A Yes.

Q Did this memo lead to the change in the criterion?

A Yes.

Q And with that, can you -- looking at the document, can you tell us how this document, this recommendation incorporated in this document lead to the change or resulted in the change of the quality criterion of the select agent program?

A Well, it was suggested upper management that the quality criterion be altered, changed. They looked at what

would happen in terms of more inclusivity, if that's a word, for our agents in the program and it was accepted by upper management.

Q And it was changed from what to what?

A I think it was -- it was changed from components having to do with QRP tenure, perhaps products per households, various score card elements, to a life insurance category.

Q Now, during the period -- and you mentioned that the change was made that was recommended in this Exhibit D3-8, was made retroactive to a certain date?

A Yes, to January 1 of the year of this memo.

Q Which is?

A 2004.

Q And did that effect -- during the time prior to January 1, 2004, when the quality criterion was, as you have described it, did -- did that criterion or the use of that criterion to determine quality, disadvantage any particular group or subgroup of State Farm agents?

A Not that I know of, no.

Q Did it disadvantage any State Farm agents located in urban areas?

A I don't think so.

Q Did it disadvantage ethnic minorities?

A No.

Q Are you aware of any statistical analysis that bear on your answers to my last three questions?

A Yes.

Q I would like to ask the witness to -- I would like to

refer the witness --

MR. REICHLER: Excuse me just a minute while I am finding the document, Your Honor.

THE COURT: Yes.

MR. REICHLER: Your Honor, I will return to this question rather than take up time waiting to find the document. I apologize for the fact that it's not readily available. We will find it and I will return to this question, and will move along and come back to it.

THE COURT: Very well.

BY MR. REICHLER:

Q Have the criteria for becoming a select agent remained the same since the changes that were made at the beginning of 2004?

A Yes.

Q Let me move from the criteria and address the subject of the awards or benefits of being a select agent. And I believe, before you, will be a document that is a copy of a supplemental joint pretrial statement. It should be two pages stapled together that perhaps Mr. Wright left over there.

A I am sorry, Mr. Reichler, what am I looking for?

MR. REICHLER: Again, I apologize, Your Honor. We seem to be having a little problem in having a couple of our documents ready today and I apologize for that. This is the first time this has happened.

May we just have a minute, Your Honor? I apologize for this.

THE COURT: Are we talking about the defendant's

supplemental statement concerning the select agent program?

MR. REICHLER: I'm sorry, Your Honor. I found the document and I about to ask him that. This is the -- I want to go through -- I want to hand him the stipulation that is in supplemental joint pretrial statement as to benefits and rewards, and ask him about each one. This way I don't --

THE COURT: You want to go through the benefits?

MR. REICHLER: Yes.

THE COURT: Very well.

MR. REICHLER: And I have an extra copy right here, so I will have Ms. Altschuller, with the Court's permission, hand it to the witness.

BY MR. REICHLER:

Q Okay. Would you -- Mr. Fisher, would you please take a look at Paragraph 2, which is a stipulation about the, quote, current benefits and rewards of the select agent program, close quote. Did you find that on the first page?

A Yes.

Q That's on the first and second page.

A I found it.

Q Just so you understand, a stipulation means that the parties have agreed to this and it's binding on the parties for the purposes of this case. So I'm not going to ask you to -- whether this is true or not. It's taken as true for the purposes of this case, but I will ask you about the elements here.

Can you read out loud the first item that is listed under the current benefits and rewards of the select agent program?

A Part 2, letter A, "Eligibility to receive co-op advertising monies."

Q Why has the -- first of all, what are co-op advertising monies?

A These are monies made available, in many cases, and primarily in the zones, where the zones agree to share in advertising expenditures with our agents who are eligible to receive them.

Q Thank you for defining that. Let me ask you, without reference specifically to any one of these items listed in paragraph 2, let me ask you this question: Take a look at all of them, at all of the items listed as awards and benefits, and let me ask you: Are agents entitled by the agents' agreement to receive any of these benefits or rewards?

A No, they are not.

Q Why does the company provide them to certain of its agents, then?

THE COURT: This is repetitious. We may not have it from this witness. We have it from other witnesses. So it's cumulative.

MR. REICHLER: In that case, I will move on very quickly.

BY MR. REICHLER:

Q Let's go back to co-op advertising monies, which you have already described.

Why has the company made them an award or benefit to select agents?

A This one in particular?

Q Yes. Now we are referring just to co-op advertising monies.

A As a result of the creation of the program, the incentive program, those incentive programs have rewards attached to them. And this particular one, it was deemed that select agents, having demonstrated by their -- by the fact that they are a select agent, have -- are exemplifying qualities that we think are, in this case, something we should advertise.

Q Now, on what basis did the company provide this type of benefit or reward to the select agents?

MR. GARNER: I object to the form. On what basis?

THE COURT: I didn't understand it, Mr. Reichler. Would you rephrase it, please.

MR. REICHLER: I certainly shall, Your Honor.

BY MR. REICHLER:

Q What consideration did the company make at the time of deciding to make the co-op advertising monies a reward or benefit under this program?

A Well, we are entitled under our agency agreement to determine how we shall advertise. If this is, indeed, an advertising money reward, then I think Section 1F in the agents' agreement allows us to do that. I don't think; I know it does.

Q Can you show us what language in Section 1F you are referring to?

A Yes. If I have an agent agreement, where would I find it?

Q You would find it in the black binder as Plaintiff's

trial Exhibits P1, P2 or P3.

MR. GARNER: I object as cumulative.

THE COURT: This is cumulative, Mr. Reichler. It has been identified by several witnesses.

BY MR. REICHLER:

Q Why did the company make free designation and yellow pages block advertisements a reward?

A Well, going into the program, that was what we were trying to do and talk to agents about that. And it was because this is an incentive program, that was one of the rewards attached to it.

Q Are select agents identified as such in all of State Farm's yellow pages advertisements?

A No, they are not.

Q What are the different ways in which State Farm or its agents advertised in the yellow page?

A Well, first there is the display ad, where generally, in a give geographic area, we have a large display ad with agents' picture across. And under the picture of those individual agents who are select, we simply say they are select agents.

Q Can I ask you to take a look at Exhibit P-22.

A Yes, sir.

THE COURT: Bear with me, please. Very well.

BY MR. REICHLER:

Q You had mentioned the group display ad, can you find an example of this in P22?

A Yes. It would be on the second sheet, front of the

second sheet, in terms of page in that area.

THE COURT: Another example of cumulative testimony.

MR. REICHLER: Your Honor, I'm just laying a foundation. I'm going to ask immediately.

BY MR. REICHLER:

Q Are agents who are not select agents also able to appear in group display ads in the yellow pages?

A Yes.

Q Can -- is there such a non-select agent that is in this particular ad that has been offered by Plaintiff?

A I believe Mr. David Threlkeld would be one.

Q And what benefit is there, then, for select agents in the yellow pages advertising?

A In this particular yellow pages advertising, the select agents get this free of charge.

Q And what about the gentleman in this particular ad who was not a select agent?

A He would have to pay a fee. I don't know when this appeared, but if it was an original, it would be a \$500 stipend he would pay, or I think it's 550 now. It changes over time.

Q To appear in the ad?

A To appear in this display ad, that's right.

Q Does that cover the full pro rata share in the ad?

MR. GARNER: Object to the form.

BY MR. REICHLER:

Q Does State Farm pay for the ad, generally?

A Yes, it does.

Q And does the 500 or \$550 paid by the agent who is not

select, does that cover his full pro rata share of the advertisement?

MR. GARNER: Object to the -- there is no foundation this is witness is familiar with the costs --

THE COURT: Overruled.

MR. GARNER: -- of advertising.

THE COURT: You may answer if you are able to.

THE WITNESS: I am. Generally not. Depends on -- obviously, it would depend on the agent and the particular phone books, but generally it does not.

BY MR. REICHLER:

Q So does that mean that State Farm pays some share of that?

A Yes.

Q So are you saying that the agent who is not select is also having advertising costs in this ad paid for by State Farm, or some part of it?

MR. GARNER: Object to the leading.

THE COURT: Overruled.

BY MR. REICHLER:

Q Does the agent, who is not select to receive any benefit here, in an ad like this --

A Yes. He would get some subsidy from the company.

Q Subsidy for what?

A For him being in this ad, his picture or her picture.

Q Are there other forms of advertisements by State Farm or its agents in the yellow pages?

A Oh, yes.

Q What other forms are they?

A One is called the State Farm trademark or logo listing in which State Farm pays for the cost of putting the logo or the "Like a Good Neighborhood" or whatever there. And we -- underneath that trademark or logo listing, agents are listed below that. The agents pay for their being in that list. In fact, the select agents who are listed here are required to be in that list. So that's another form.

There is another type of advertising in yellow pages where agents can have their own display ad.

Q What was the second type?

A Logo or trademark.

Q Would you look at the previously page of P-22? It's on the back of the first sheet.

A Yes, sir.

Q Is this an example of one of the types of ads that you mentioned?

A Yes, it is.

Q It's an example of which type of ad?

A Logo or trademark ad.

Q Are there both select agents and non-select agents listed here together?

I don't mean in this particular -- you may not know these agents.

A Yes. If there were, they certainly would be listed together.

Q And agents, whether they are select or non-select, pay to be in this ad?

A Yes, they do.

Q And select agent are not designated as such in this type of ad?

A No, they are not.

Q Who pays for the logo or the trademark?

A State Farm.

Q And you mentioned the -- this third type of advertising in the yellow pages?

A Yes.

Q What's that?

A That would be the individual display ad.

Q What's an individual display ad?

A It's where an agent simply would advertise himself and pay for it himself.

Q And State Farm doesn't cover the costs of any of any individual display ads?

A No.

Q Whether it's a select agent or non-select agent?

A No.

Q What would be the consequences, if any, in your opinion, if State Farm were to change it's policy and withdraw the reward or benefit that company gives --

THE COURT: Withdraw what?

BY MR. REICHLER:

Q Withdraw the reward or benefit that the company gives select agents in the form of free placement of their photographs in the group display ads?

A Well, there would be 12,000 or so agents, 75 percent

of our agency force very unhappy with us for renegeing on this display ad. They've earned it and we provided this benefit.

Q Is there any reason, in your opinion, why any agent who wants to became a select agent could not became one?

A Generally, no.

MR. REICHLER: Your Honor, we do have that document which we seem not to have been able to find, which I mentioned earlier. It would be the last thing I would question the witness about and then we are done. May we have a few minutes to locate that document? We have also sent to our --

THE COURT: Well, we are three minutes away from the luncheon recess. I'll recess now. If you don't have it by 1:45, we are going to move on.

MR. REICHLER: I -- absolutely, Your Honor. I certainly understand that. Thank you, sir.

THE COURT: We stand in recess until 1:45.

(The proceedings adjourned at 12:27 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 29th day of July, 2005.

I further certify that the foregoing 118 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 1st day of August, 2005.

OFFICIAL COURT REPORTER

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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NATIONAL ASSOCIATION OF :
STATE FARM AGENTS, INC., :

Plaintiff, :

vs. : No. CA 4089-02

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

Defendants. :

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Washington, D.C.
Friday, July 29, 2005

The trial in the above-entitled matter was resumed
before the HONORABLE LEONARD BRAMAN, Senior Judge, in
Courtroom No. 318, commencing at approximately 1:45 p.m.

THIS TRANSCRIPT REPRESENTS THE
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REPRESENTS THE TESTIMONY AND
PROCEEDINGS OF THE CASE AS
RECORDED.

MARIA M. ALLISON, RPR
Official Court Reporter Telephone (202) 879-1050

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APPEARANCES:

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P R O C E E D I N G S

* * *

(Proceedings resumed. 1:45 p.m.)

Thereupon,

GREGORY FISHER,

having been recalled as a witness on behalf of the Defendants, and having been previously sworn, testified further, as follows:

THE COURT: Mr. Reichler.

MR. REICHLER: Thank you, Your Honor, and good afternoon, Mr. Fisher.

THE WITNESS: Good afternoon.

DIRECT EXAMINATION

BY MR. REICHLER:

Q. Mr. Fisher, there should be in front of you an exhibit that has been marked for identification as Defendants' Exhibit 87A and B. It's not in any of the binders. It should be loose. It was given -- presented to another witness, but it was not moved for admission at that time.

A. Mr. Reichler, I have all kinds of papers here. Could you --

MR. REICHLER: Yes.

THE COURT: That's one of them, sir.

1 THE WITNESS: How about that one?

2 MR. REICHLER: Yes.

3 A. Yes, I have them.

4 Q. You have both of them?

5 A. Yes, I do.

6 Q. Mr. Fisher, are you aware of what this is?

7 A. Yes, I am.

8 Q. What is it?

9 A. This first document is kind of a -- excuse me --
10 a template that can be used by an agent if he wishes to
11 create his own business plan. You click your name and your
12 date, your city. This becomes the cover page. Behind this
13 cover page is table of contents for what may be -- either
14 considered in the business plan or possibly put in the
15 business plan. And then it goes through the various aspects
16 of a business plan, and it allows you to enter information
17 from another source onto this plan and have a document that
18 would be -- that would look like this, except it would be
19 personalized with a person's name on it and date and time
20 and so forth.

21 Q. And the second part of the document which has been
22 marked 87B?

23 A. This is a series of documents that appear on a
24 computer screen in a program under what's called the agents
25 business system, ABS, that agents have on their systems, and

1 these various documents within this are used to help guide
2 an agent through a completion of a business plan.

3 Q. Can you give just a very quick, very quick --

4 A. Sure.

5 Q. -- illustration of how that is done with one or
6 two examples? That's all.

7 A. Okay. Well, I'm going to have to count some
8 number of pages down here. I'll count pages.

9 Q. I want to get through this in about one minute,
10 Mr. Fisher. I hate to put that pressure on you, but --

11 A. Let's go down to nine pages, and we have a
12 document that has a lot of field filled in with numbers.

13 Q. This is the ninth page?

14 A. I think so. The top of it says, "Marketing review
15 of your assigned book of business trend analysis."

16 Q. Wait. Please wait for the Court.

17 THE COURT: I have it.

18 MR. REICHLER: Thank you, sir.

19 A. If, as an agent, you decide to use any of this,
20 this computer program is actually aligned with your own book
21 of business, and you can download into your book of business
22 information about your household, your PIF, Your Honor,
23 policies in force -- it's there off on the left -- your
24 total policies in force, your auto policies in force, and so
25 forth, and you can do trend analysis, you can do programs

1 that will give you an idea of rate of return. You can put
2 in some plans you might have, and that will give you what
3 will happen to your income if those things happen, and it's
4 a way to kind of personalize your business plan by using
5 information that we have about your particular business, and
6 we just download it for you. It's very easy.

7 Q. This particular exhibit, Plaintiff's -- I'm sorry
8 -- Defendants' 87A and B, did this come off of that website?

9 A. Yes.

10 Q. State Farm website?

11 A. Yes.

12 Q. And this is accessible to State Farm agents?

13 A. Yes, it's on there. It's on their computer.

14 Q. Who actually produced this document? Who printed
15 it out?

16 A. It was printed out for me by the woman who was in
17 charge of this area, agents business planning, back at the
18 corporate headquarters, a woman named Rita Leone (ph).

19 Q. Is this document -- Are these guidelines, are
20 they obligatory? Do agents have to --

21 A. Oh, no, purely voluntary.

22 Q. So, if agents submit a business plan under the
23 select agent program, that is to qualify for the select
24 agent program, do they have to follow this template or these
25 guidelines?

1 A. Oh no, sir, nor do they, if they simply want to do
2 it themselves, do they have to submit it to us. It's for
3 their use.

4 Q. And are you aware of any occasion when an agent
5 submitted a business plan in any form, in order to qualify
6 for the select agent program, where that business plan was
7 deemed inadequate by State Farm?

8 A. No.

9 MR. REICHLER: Your Honor, I would like to move
10 into evidence Exhibit -- Defendants' 87A and B.

11 MR. GARNER: No objection.

12 THE COURT: Without objection, admitted.

13 (Thereupon, Defendants' Exhibit No. 87A
14 and 87 were admitted into evidence.)

15 MR. REICHLER: One more document, Your Honor, and
16 this is -- and I thank Your Honor, and my associates thank
17 Your Honor for giving us the time to find this document,
18 which we would like to have marked for identification,
19 please. I will advise the Court that this document had been
20 marked for identification in connection with the
21 cross-examination of Mr. Killingsworth, but it was withdrawn
22 at that time because it was obviously not the right witness
23 through whom to attempt to introduce the document.

24 THE COURT: This was once upon a time Defendants'
25 78, I believe.

1 MR. REICHLER: That's correct, and we are happy to
2 keep the same designation. I don't think that designation
3 has been given to any other document.

4 THE COURT: Very well.

5 BY MR. REICHLER:

6 Q. Mr. Fisher, do you know what this document is?

7 A. Yes, sir, I do.

8 Q. What is it?

9 A. It's a document prepared by State Farm that kind
10 of cross-references two sets of data, data about
11 demographics -- or not demographics but market areas, and
12 also data about various State Farm agents by race.

13 Q. And how does it relate to the select agent issues?

14 A. Well, I understand that one of the allegations is
15 that --

16 Q. No, I didn't ask you that.

17 A. Okay.

18 Q. I don't want you talking about allegations. I'm
19 just simply asking you -- well, let me say the document
20 speaks for itself. Why was this document prepared? Why was
21 it prepared?

22 A. It was prepared to show --

23 Q. Why was it prepared?

24 A. At the request of the Court. I don't know. I'm
25 assuming that's what it is.

1 Q. And what was done at the Court's request?

2 A. We searched our database for information, in
3 accordance with the select agent program, information to
4 show demographic information about the select agents and by
5 city, metropolitan area, suburban area and rural areas, and
6 then cross-referenced that by characteristics of race.

7 Q. And was this prepared under your direction?

8 A. The person who prepared and had it prepared works
9 in the agency department, yes, sir.

10 Q. Under your jurisdiction?

11 A. Yes.

12 Q. Yes. And who did prepare it under your direction?

13 A. A gentleman named Ward - W-A-R-D -- Lancaster,
14 L-A-N-C-A-S-T-E-R.

15 Q. And what is his role? What's his job?

16 A. His title is manager of an agency department.

17 Q. And why did you designate him to produce the
18 information that's in this document?

19 A. He is the person I would always go to information
20 such as this.

21 Q. And why is that?

22 A. He is the person most knowledgeable in my view.

23 Q. Does he have access to a database, then?

24 A. Absolutely, yes.

25 Q. And the information that is -- If you know, the

1 information that is presented on Defendants' 78, did that
2 come from State Farm's business records?

3 A. Yes, it did.

4 Q. State Farm maintains this kind of data in the
5 ordinary course of business?

6 A. Yes.

7 Q. And are those the records that Mr. Lancaster
8 accessed?

9 A. They are.

10 Q. And what is your view on the accuracy or
11 reliability of the information that Mr. Lancaster produced?

12 A. I think it would be very accurate.

13 Q. And is that the information that's presented in
14 Defendants' Exhibit 87? Or 78, I'm sorry.

15 A. This document.

16 Q. This document?

17 A. Yes.

18 MR. REICHLER: Your Honor, I respectfully move the
19 admission of Defendants' 78.

20 MR. GARNER: Your Honor, I object. We haven't
21 been given --

22 THE COURT: Grounds?

23 MR. GARNER: This is a compilation of data as to
24 which we have been given no underlying information or data,
25 plus I don't know what these categories mean or how these

1 designations were made. I don't know what a city is, I
2 don't know what a Metro is in State Farm's definition. I
3 don't know --

4 THE COURT: That's a matter of cross-examination.

5 MR. GARNER: Yeah, but I still don't have the
6 underlying data. I have no way to test it.

7 MR. REICHLER: May go to weight.

8 THE COURT: This would come under the business
9 record rule, and Mr. Reichler has laid the foundation, so I
10 will overrule the objection and admit the document into
11 evidence.

12 (Thereupon, Defendants' Exhibit No. 78
13 was admitted into evidence.)

14 MR. REICHLER: I would also remind Mr. Garner -- I
15 know the Court doesn't need to be reminded -- that this very
16 document was presented to the Court in our July 19
17 submission.

18 THE COURT: Yes, I recall it.

19 THE COURT: For purposes of the record, it was
20 attached as an exhibit to Defendants' supplement statement
21 concerning the select agent program.

22 MR. REICHLER: Yes. Thank you, Your Honor. I
23 have for further questions. I think the document --

24 THE COURT: Mr. Garner, you may cross-examine.

25 MR. GARNER: Thank you, Your Honor.

1

2

CROSS-EXAMINATION

3

BY MR. GARNER:

4

Q. Mr. Fisher, you ever heard of the Watts

5 neighborhood in Los Angeles?

6

A. Yes, I have, sir.

7

Q. How does it get categorized under this?

8

A. I don't think it does, sir.

9

Q. It doesn't. How about Grosse Pointe, Michigan?

10 Where does it get categorized? Do you know?

11

A. No. In terms of this document?

12

Q. Yes, sir.

13

A. I do not know.

14

Q. What's the definition of a city here?

15

A. Of a city?

16

Q. Yes. What's the minimum population to be a city

17 on Defendants' 78?

18

A. I think it -- I do not know.

19

Q. What's the difference between city and Metro?

20

A. City would be the, quote, corporate limits, I

21 suppose. Metro would be the metropolitan area around it.

22

Q. You suppose. Do you know?

23

A. That's what, when I was an agency director and we

24 used the marketing data from which this comes, that's what

25 it was.

1 Q. When were you an agency director?

2 A. 1988 to 1994.

3 Q. So you don't have any information as to the
4 difference between city and Metro that's more current than
5 ten years old?

6 A. No.

7 Q. And Bloomington, Illinois, that's where your
8 headquarters is?

9 A. That's correct.

10 Q. How is it categorized under here? City? Metro?
11 Rural?

12 A. I do not know.

13 Q. You don't know where your hometown is on this?

14 A. I don't know where my -- No.

15 Q. Who decides whether a person with a Chinese mother
16 and a Sudanese father is Asian or African-American?

17 A. The person.

18 Q. So this is all self-selection in terms of the
19 ethnics? It's self-selection? If I'm the agent and I put
20 down that I'm Indian, State Farm accepts that designation?

21 A. We believe our agents, sir, yes.

22 Q. And, now, after -- Who did you say prepared this?

23 A. It was prepared at the direction of Mr. Ward,
24 W-A-R-D -- Lancaster.

25 Q. I'm sorry. I thought I heard you testify on

1 direct that Mr. Lancaster -- Was that his name?

2 A. Yes, sir.

3 Q. Yeah. That he prepared it?

4 A. No, I don't think I said that, sir.

5 Q. Oh. So it was --

6 A. He was given the direction to prepare this
7 document. He went to the people who control the databases
8 and asked for the report.

9 Q. Okay. Who actually prepared it, then? Do you
10 know?

11 A. I can't tell you which individual, no.

12 Q. So you don't know who prepared it?

13 A. The individual's name who hit the buttons on the
14 computer? No, I don't.

15 Q. What department was it in?

16 A. It would have been -- Well it, the person or the
17 information, would have been in the data system which is
18 kept in the corporate south department, systems department.

19 Q. How many people work there?

20 A. 5,000.

21 Q. So it was one of them?

22 A. Yes.

23 Q. Now, there was some testimony earlier about
24 whether the select agent programs of probability criterion
25 was achievable by agents who had customers in areas of --

1 low economic areas. Do you recall that testimony?

2 MR. REICHLER: Excuse me.

3 MR. GARNER: Areas where people have low income.

4 MR. REICHLER: Objection. It was not this
5 witness' testimony. I don't know what -- Is he asking him
6 to recall another witness' testimony?

7 THE COURT: Would you clarify that, Mr. Garner?

8 MR. GARNER: Yes. Do you recall that there was
9 testimony in this case --

10 THE COURT: By another witness?

11 MR. GARNER: By another witness, yes, in fact by
12 Mr. Knapp, that the profitability criteria were hard for
13 people in demographic areas where there were low incomes for
14 the agents to achieve it with policyholders of that
15 demographic.

16 A. Yes, I remember Mr. Knapp stating that, I think,
17 his hometown in south Illinois, southern Illinois.

18 Q. Right. And that has to do with the demographic
19 characteristics of the policyholders; right?

20 MR. REICHLER: Excuse me. He is asking him now to
21 interpret Mr. Knapp's testimony. It's one thing to say do
22 you recall.

23 THE COURT: Well, we each do that. I don't see
24 anything impermissible about that. If the witness has a
25 different recollection, he may say so. Do you recall the

1 question, sir?

2 THE WITNESS: No. I wouldn't mind having it --
3 request him repeat it.

4 THE COURT: Would you rephrase it?

5 BY MR. GARNER:

6 Q. Well, did you understand Mr. Knapp to testify that
7 some agents with policyholders in areas where there was low
8 income had difficulty meeting the profitability requirement
9 under the select agent program?

10 A. I remember him giving that testimony, yes, sir.

11 Q. Yes. And does this exhibit, Defendants' 78, have
12 any category that identifies areas with policyholders of low
13 income?

14 A. Well, yes, if there are policyholders with low
15 income -- I'm not trying to be obtuse here -- this is
16 everybody.

17 Q. Well, but I mean can you isolate any category, any
18 box on this thing, where you would say that's where there
19 are some -- there are policyholders, as opposed to agents,
20 policyholders of low income?

21 A. I'm sure there are policyholders of low income in
22 every category, depending how you define "low income," of
23 course.

24 Q. So there is no definition on here that isolates
25 policyholders of low income?

1 A. Correct.

2 Q. Now, the business plan prepared by agents are
3 reviewed at the zone level; is that right?

4 A. They are reviewed at the AFO level.

5 Q. I'm sorry. I was wrong. And that's a level below
6 the zone; is that right?

7 A. Well, it's a level within the zone. I think that
8 would be fair to say.

9 Q. And there are roughly 500 AFOs?

10 A. Yes, sir.

11 Q. There is no national standard for a business plan,
12 is there?

13 A. In relation to --

14 Q. Select agents?

15 A. -- anything? Select agent? No.

16 Q. It's all decided at the AFO level?

17 A. That's correct.

18 MR. GARNER: I don't have anything further, Your
19 Honor.

20 THE COURT: Is there redirect?

21 MR. REICHLER: No, sir.

22 THE COURT: If there is nothing further, the
23 witness is excused. Thank you.

24 THE WITNESS: Thank you, Your Honor.

25 (Thereupon, the witness was excused from the

1 witness stand.)

2 THE COURT: Mr. Reichler.

3 MR. REICHLER: We have no further witnesses. This
4 concludes our presentation on select agent, Your Honor.

5 THE COURT: Is there rebuttal?

6 MR. GARNER: No, Your Honor.

7 THE COURT: Then that concludes the testimony on
8 the subject of select agent program.

9 MR. GARNER: Correct.