

IN THE DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA
FIRST DISTRICT

ALLSTATE FLORIDIAN INSURANCE COMPANY,
et al.,

Respondents/ Appellants,

Case No.: 1D-08-275

v.

OFFICE OF INSURANCE REGULATION

Petitioner/ Appellee.

**MOTION OF NATIONAL ASSOCIATION OF PROFESSIONAL
ALLSTATE AGENTS, INC. FOR LEAVE TO FILE BRIEF OF AMICUS
CURIAE IN SUPPORT OF THE ALLSTATE COMPANIES'
EMERGENCY MOTION FOR IMMEDIATE RELIEF FROM
IMMEDIATE FINAL ORDER SUSPENDING LICENSES**

Pursuant to Florida Rule of Appellate Procedure 9.370, the National Association of Professional Allstate Agents, Inc. (“NAPAA”), moves for leave to file a brief as amicus curiae in support of Appellant Allstate Companies’ Emergency Motion for Immediate Relief from Immediate Final Order Suspending Licenses. Due to the emergency nature of the proceedings and the limited time frame available, NAPAA’s proposed brief as amicus curiae is attached to this motion as Exhibit A. The proposed amicus brief provides the Court with information regarding the irreparable harm that will result if the stay of enforcement of the Immediate Final

Order (“IFO”) of the Appellee Office of Insurance Regulation (“OIR”) entered on January 18, 2008, does not remain in place during the pendency of the Allstate Companies’ appeal from that final agency action.

I. NAPAA’s interest

Amicus curiae National Association of Professional Allstate Agents, Inc. (“NAPAA”) is a not for profit voluntary trade association incorporated in the State of New York and organized pursuant to Section 501(c)(5) of the Internal Revenue Code. Revels Aff. ¶ 5.¹ NAPAA is dedicated to the success of Allstate exclusive agency owners and to the advancement of their independence and entrepreneurship. *Id.* NAPAA’s members are current and former Allstate Insurance agents. *Id.* ¶ 6. At present, NAPAA has one hundred twenty-nine (129) members in the State of Florida. *Id.* ¶ 7. NAPAA is not affiliated with Allstate and receives no financial or other assistance from Allstate. *Id.* ¶ 8.

NAPAA’s Florida members, like all Allstate agents in Florida, are deemed by virtue of their contracts with Allstate to be independent contractors and not employees of Allstate. Revels Aff. ¶ 3. As such, they independently own and operate their Allstate agencies in Florida. *Id.* NAPAA’s Florida members, again like all

¹The Affidavit of the current NAPAA President, Dale Revels (“Revels Aff.”), is an Appendix to the proposed amicus brief.

Allstate agents in Florida, are “captives,” who are contractually prohibited from selling non-Allstate (or Allstate affiliated) insurance products, with certain exceptions for real property insurance. *Id.* ¶ 11.

NAPAA’s Florida members care passionately about their businesses, their employees, and their insurance clients. Neither NAPAA nor its members has any stake or say in the ongoing subpoena dispute between the Office of Insurance Regulation (“OIR”) and Allstate. *Id.* ¶ 8. But NAPAA, on behalf of its members, is uniquely positioned to speak to the serious, irreparable harm that will be suffered by Allstate agents, their staff members, and the insurance consumer public if the January 18, 2008, stay of the OIR’s Immediate Final Order (“IFO”) is lifted. *Id.* ¶¶ 9-30.

II. How NAPAA can assist the Court in the disposition of the case

NAPAA’s proposed brief as amicus curiae, Ex. A, will assist the Court because it addresses an issue critical to the Court’s determination whether to keep the stay in place pending the Allstate Companies’ appeal: the irreparable harm that NAPAA’s members will suffer if the IFO does not remain stayed.

III. Whether all parties consent to NAPAA’s filing of an amicus brief

Counsel for NAPAA has contacted counsel for the OIR and counsel for Allstate to request their consent to NAPAA’s filing of a brief as amicus curiae. At

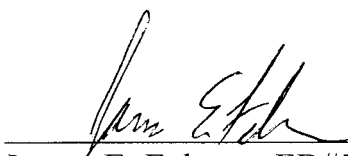
the time of filing of this motion, neither party's counsel has provided their position with respect to the motion. Upon receiving a response to its request for consent to the motion, NAPAA will supplement this motion to provide the Court with the parties' positions.

IV. Conclusion

For these reasons, it is respectfully requested that the Court grant the motion of the National Association of Professional Allstate Agents, Inc., for leave to file a brief as amicus curie and accept the proposed amicus brief attached hereto as Exhibit A for filing.

Respectfully submitted,

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Counsel for National Association of Professional Allstate Agents, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished by facsimile and
Federal Express this 23rd day of January 2008, to:

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James E. Felman

Exhibit “A”

IN THE DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA
FIRST DISTRICT

ALLSTATE FLORIDIAN INSURANCE COMPANY,
et al.,

Respondents/ Appellants,

Case No.: 1D-08-275

v.

OFFICE OF INSURANCE REGULATION

Petitioner/ Appellee.

On Appeal from the Office of Insurance Regulation

**BRIEF OF NATIONAL ASSOCIATION OF PROFESSIONAL
ALLSTATE AGENTS, INC. AS AMICUS CURIAE**

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STATUTES AND OTHER AUTHORITIES

Fla. R. App. P. 9.190(e)(2)(B)

**STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE
AND ITS INTEREST IN THE CASE**

Amicus curiae National Association of Professional Allstate Agents, Inc. (“NAPAA”) is a not for profit voluntary trade association incorporated in the State of New York and organized pursuant to Section 501(c)(5) of the Internal Revenue Code. Revels Aff. ¶ 5.¹ NAPAA is dedicated to the success of Allstate exclusive agency owners and to the advancement of their independence and entrepreneurship. *Id.* NAPAA’s members are current and former Allstate Insurance agents. *Id.* ¶ 6. At present, NAPAA has one hundred twenty-nine (129) members in the State of Florida. *Id.* ¶ 7. NAPAA is not affiliated with Allstate and receives no financial or other assistance from Allstate. *Id.* ¶ 8.

NAPAA’s Florida members, like all Allstate agents in Florida, are deemed by virtue of their contracts with Allstate to be independent contractors and not employees of Allstate. Revels Aff. ¶ 3. As such, they independently own and operate their Allstate agencies in Florida. *Id.* NAPAA’s Florida members, again like all Allstate agents in Florida, are “captives,” who are contractually prohibited from selling non-Allstate (or Allstate affiliated) insurance products, with certain exceptions for real property insurance. *Id.* ¶ 11.

¹The Affidavit of the current NAPAA President, Dale Revels (“Revels Aff.”), is an Appendix to this Brief.

NAPAA's Florida members care passionately about their businesses, their employees, and their insurance clients. Neither NAPAA nor its members has any stake or say in the ongoing subpoena dispute between the Office of Insurance Regulation ("OIR") and Allstate. *Revels Aff.* ¶ 8. But NAPAA, on behalf of its members, is uniquely positioned to speak to the serious, irreparable harm that will be suffered by Allstate agents, their staff members, and the insurance consumer public if the January 18, 2008, stay of the OIR's Immediate Final Order ("IFO") is lifted. *Id.* ¶¶ 9-30.

SUMMARY OF THE ARGUMENT

NAPAA's members, like all Allstate agents in Florida, will be irreparably harmed if this Court lifts its January 18, 2008, stay order in this matter. The anticipated harm includes the loss of revenue, the loss of goodwill, and, in some instances, the complete loss of the agent's business. Similarly, agents' support staff stand to lose their employment in many cases. Current and prospective clients of Allstate agents will also be irreparably harmed by the loss of certain pricing discounts, by the lost opportunity to keep both current and future policies with a single, existing Allstate agent of their choice, and by the loss of unique and competitive products in the market place.

ARGUMENT

If the Court lifts its January 18, 2008 stay of the IFO, every Allstate agent in Florida (including NAPAA's members), as well as their support staff and their present and future clients, will suffer irreparable harm. For the agents and their support staff, that harm includes a loss of revenue, a loss of good will, and quite possibly the complete loss of a business and a livelihood. For insurance consumers, that harm includes a loss of favorable pricing, a loss of convenience, a loss of competitive products and options, and ultimately a loss of choice. Given this widespread, irreparable harm and related considerations of the public interest, the Court should maintain the January 18, 2008, stay of the IFO.

A. Standard of Review

Pursuant to Florida Rule of Appellate Procedure 9.190(e)(2)(B), where an administrative agency has ordered an emergency suspension, restriction, or limitation of license, the Court may issue an order to show cause and "after considering the agency's response ... grant a stay on appropriate terms." Generally, the Court has the authority to enter a stay pending appeal upon a showing of a likelihood of success on the merits and irreparable harm in the absence of a stay. *See Perez v. Perez*, 769 So. 2d 389, 391 n. 4 (Fla. 3d DCA 1999) (citing *State ex rel. Price v. McCord*, 380 So. 2d 1037 (Fla 1980)). This Court has applied this general standard in considering whether to stay administrative action. *See Fortune Life Ins. Co. v. State Dep't of Ins.*,

569 So. 2d 1325, 1326-27 (Fla. 1st DCA 1990) (where insurance company moved for stay of order disapproving policy based on irreparable harm resulting from inability to sell policy, noting that a temporary stay had been granted); *White Constr. Co., Inc. v. State Dep't of Transp.*, 526 So. 2d 998, 999 (Fla. 1st DCA 1988) (in appeal of order suspending contractor, proper grounds for issuance of stay included likelihood of prevailing on appeal and irreparable harm if stay was not granted or a showing the stay would be in the public interest).

B. Irreparable Harm to Allstate Agents and Agency Staff

Allstate agents independently own and operate their agencies. Revels Aff. ¶ 3. But they are contractually bound (with certain exceptions for real property) to sell only Allstate insurance products. *Id.* ¶ 11. If the IFO goes into effect, agents will immediately lose the ability to generate commission income from the sale of new policies. *Id.* ¶ 12. The loss will be felt most keenly by newer agents who often do not have sufficient commission income from policy renewals to sustain their business operations. *Id.* ¶ 15.

Likely, support staff members will be the first to feel the full measure of the IFO's grave consequences. Agents employ or contract with many staff members solely to procure new business. Revels Aff. ¶ 16. If the agent herself is unable to write that business, she will have no choice but to terminate the staff member. Thus, the agent loses revenue, and the staff member loses his livelihood. *Id.*

In a case of bitter symmetry, the extreme threat the IFO poses for newer agents is balanced by the problems it creates for agents at the sunset of their careers. Under their contracts with Allstate, agents retain an “economic interest” in their Allstate book of business. Revels Aff. ¶ 19. For most agents, the prospect of selling this “economic interest” represents a key piece of their retirement and financial planning. *Id.* ¶ 20. The IFO will most certainly deflate the market for Allstate agencies in Florida – if not destroy it completely. *Id.* ¶ 22. Pending deals will fall through, and future deals will not materialize. Like stock in a newly bankrupt company, the “economic interest” that agents hold in their books of business will plummet in value immediately. *Id.*

Even for those agents able to withstand the immediate impact of lost commissions from new sales, the IFO promises serious, long-term harm. If agents are unable to handle their clients’ insurance needs, they will ultimately lose the goodwill they have worked to establish in the marketplace. Current clients will grow frustrated and leave, and new business will disappear as word spreads that agents cannot offer a full menu of insurance products. Revels Aff. ¶¶ 17-18. With the certain prospect of falling revenues and tarnished reputations, NAPAA’s members and their fellow Allstate agents in Florida reasonably fear that the IFO, if allowed to take effect, will put at least some of them out of business permanently. Revels Aff. ¶ 15.

Although a loss of business revenue in and of itself may be insufficient to constitute irreparable harm in a given case, Florida law recognizes the potential destruction of a business as irreparable harm warranting equitable relief. *U.S. 1 Office Corp. v. Falls Home Furnishings, Inc.*, 655 So.2d 209, 210 (Fla. 3d DCA 1995). Specifically in the context of administrative action, federal courts have treated the potential destruction of the affected business as irreparable harm justifying a stay or injunction of the administrative action. *See, e.g., Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. 1977); *Patriot, Inc. v. United States Dep't of Housing & Urban Dev.*, 963 F. Supp. 1, 5 (D.D.C. 1997); *Art-Metal USA, Inc. v. Solomon, Admin'r, Gen. Servs. Admin.*, 473 F. Supp. 1, 4 & n.4 (D.D.C. 1978). In a similar vein, a federal court held that “[i]n a competitive industry where customers are brand loyal,” “loss of market share constitutes irreparable harm.” *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck-Consumer Pharm. Co.*, 290 F.3d 578, 596 (3d Cir. 2001). Additionally, injury to a business’s reputation and goodwill, as NAPPA’s members will suffer here if the stay of the IFO does not remain in place, constitutes irreparable harm. *Grant v. Robert Half International, Inc.*, 597 So.2d 801, 802 (Fla. 3d DCA 1992); *see also Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 20 (1st Cir. 1996) (“injury to goodwill and reputation,” is irreparable harm); *Patriot, Inc.*, 963 F. Supp. at 5 (damage to business reputation is irreparable harm); *Honeywell, Inc. v. Consumer Prod. Safety Comm'n*, 582 F. Supp.

1072, 1078 (D.D.C. 1984) (injury to corporate goodwill, reputation, and competitive position is irreparable injury). One federal court summarized the state of the law regarding irreparable harm to a business as follows: “Numerous cases support the conclusion that loss of customers, loss of goodwill, and threats to a business’ viability can constitute irreparable harm.” *Zurn Constructors, Inc. v. B.F. Goodrich Co.*, 685 F. Supp. 1172, 1181 (D. Kan. 1988) (collecting cases).

The IFO at issue threatens the very survival not of only one business, but of dozens, if not hundreds, of Allstate agents’ businesses throughout Florida. Those that survive if the IFO takes effect will pay a heavy price as they seek to restore their reputations and the goodwill lost through no doing of their own. For all of these reasons, the January 18, 2008, stay of the IFO should be maintained.

C. Harm to Insurance Consumers

The IFO is harmful to consumers as well as agents and must be stayed for this reason too. If the stay is lifted and the IFO is put in place, existing Allstate insurance consumers in Florida will lose product and provider options that are currently available to them. They will lose the convenience, comfort, and often favorable pricing resulting from maintaining all of their insurance with their existing Allstate agent. Instead, they will be forced to either split their policies among multiple agents at greater inconvenience and, in all likelihood, at greater expense, or give up an

established relationship of their own choosing with their Allstate agent. Revels Aff. ¶¶ 24-27.

Insurance consumers in Florida place an extremely high level of trust and confidence in NAPAA members as their Allstate agents. Revels Aff. ¶ 29. Many consumers will have difficulty understanding why their Allstate agent cannot write a new policy, and they will be uncomfortable seeking insurance elsewhere. *Id.*

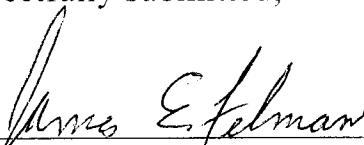
The IFO will reduce competition in the marketplace. It will limit the range of products available to consumers. It will deny consumers the opportunity to do business with their agent of choice. “It is beyond question that protecting competition is in the public interest” *Sixty Enterprises, Inc. v. Roman & Ciro, Inc.*, 601 So.2d 234, 236 (Fla. 3d DCA 1992) (preliminary injunction prohibiting competing fuel distributor from selling fuel below cost upheld). In this case, the Court’s stay should remain in place to ensure that full competition in the insurance market is preserved. Consumers are harmed when they lose choices, and the public interest is not served by stifling competition. For these reasons, the Court’s January 18, 2008, stay order should remain in effect.

CONCLUSION

For the reasons set forth above and in the Allstate Companies' Corrected Emergency Motion for Immediate Relief From Immediate Final Order Suspending Licenses, the Court should order that the temporary stay entered on January 18, 2008, remain in effect pending a final disposition on the Allstate Companies' appeal.

Respectfully submitted,

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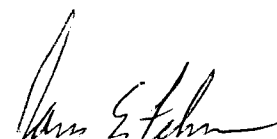


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Counsel for National Association of Professional Allstate Agents, Inc.

CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS

I certify that this Brief of the National Association of Professional Allstate Agents, Inc. as Amicus Curiae complies with the font requirements of Florida Rule of Appellate Procedure 9.100(1). The brief has been prepared using Times New Roman, 14-point font.



James E. Felman

APPENDIX

Affidavit of Dale Revels,
President of the National Association of Professional Allstate Agents, Inc.

AFFIDAVIT OF DALE REVELS

STATE OF FLORIDA)
)SS
COUNTY OF ORANGE)

Dale Revels, being first duly sworn, deposes and states that:

1. I am over twenty-one years of age and am competent to testify in this matter. I am a resident of Orange County, Florida, and I do business through my corporation, Ark Insurance Group, Inc. (my "agency") at 600 North Thacker Avenue #D-45, Kissimmee, Florida 34741 in Osceola County.
2. I am an insurance agent licensed to sell various lines of insurance in the State of Florida, including property and casualty, life, and various financial products. I have been an Allstate agent for 20 years.
3. Through my agency, I am under contract with Allstate Insurance Company ("Allstate") to sell Allstate insurance policies in Florida. According to my contract with Allstate, I am an independent contractor and not an employee of Allstate.
4. I currently serve as President of the National Association of Professional Allstate Agents, Inc. ("NAPAA").
5. NAPAA is a volunteer, not for profit corporation organized under Section 501(c)(5) of the Internal Revenue Code. NAPAA is incorporated in the State of New York. NAPAA is dedicated to the success of Allstate exclusive agency owners and to the advancement of their independence and entrepreneurship.
6. NAPAA's membership consists of insurance agents under contract with Allstate, as well as former Allstate agents. NAPAA has members in forty-four states in the United States of America.
7. Currently, NAPAA has 129 members in the state of Florida. Historically, NAPAA has had as many as 350 members in the state of Florida at any given time.
8. NAPAA is not affiliated with Allstate, and NAPAA receives no financial or other assistance from Allstate.
9. NAPAA and its members are greatly concerned by the irreparable harm that has been caused by the Immediate Final Order ("IFO") issued by the Florida Office of Insurance Regulation ("OIR") suspending Allstate's (and, consequently, all Allstate agents', including NAPAA's Florida members') ability to write new insurance policies in the state of Florida.

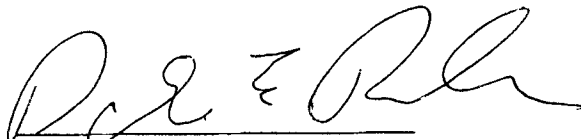
10. NAPAA and its members are further concerned that if this Court's January 17, 2008 stay of the IFO is lifted, the harm that will be suffered by NAPAA's members, Allstate agents in general, and by Florida insurance consumers will be greatly increased.
11. Allstate agents are commonly known as "captive" agents. With certain exceptions for property insurance, Allstate agents generally may not sell products from any company other than Allstate and its affiliates.
12. If the Court's stay is lifted and the IFO put into effect, my fellow Allstate agents in Florida and I will be unable to sell new insurance products either to existing or new clients.
13. My agency, like every Allstate agency, generates revenue from two primary sources: commissions paid by Allstate for the sale of new policies or products, and commissions paid by Allstate for the renewal of previously sold policies or products.
14. Currently, commissions for new sales constitute approximately ten (10%) percent of total revenue for my agency. Typically, newer agencies will be much more dependent on new sales commissions as an overall portion of agency revenue. Any loss of commission from the sale of new policies or products will have an immediate impact on my agency's operations.
15. It is reasonable to expect that newer Allstate agencies will have insufficient renewal commission income to support their business operations and will be forced out of business if they are unable to sell new policies or products. Given their limited time in the marketplace, it will be difficult to calculate their lost opportunities or future profits.
16. Many Allstate agencies engage sales producers, either as employees or as independent contractors, solely to procure new business. These individuals are often compensated strictly on a commission basis. If the agency is prohibited from selling Allstate's policies and products, these individual sales producers will have no means of maintaining their livelihood and will lose their positions.
17. As I believe is true with all Allstate agencies, my agency's success is built upon its ability to address a wide array of client needs and concerns in a prompt, efficient fashion. If my agency is unable to offer products or services to address the new or changing needs of its existing clients, I am certain that I will lose an ever growing portion of those clients who will seek the convenience of addressing all of their insurance needs with a single agent or agency. If the stay is lifted and the IFO goes into effect, I anticipate that Allstate agents, including NAPAA's members, will lose not only commission income on new sales but will also lose renewal income on existing policies and products as clients move their business elsewhere.

18. If the stay is lifted and the IFO is allowed to take effect, I anticipate that my agency, like all Allstate agencies, will be forced to devote increased time and energy to explaining to existing and prospective clients why the agency is unable to offer new products and services. In the same conversation, the agency will need to attempt to explain the benefits of keeping existing policies in place.
19. Under my contract with Allstate, I, like all Allstate agents, am provided an "economic interest" in my Allstate book of business. According to the contract, under certain circumstances, and subject to Allstate's approval, I can transfer that "economic interest" to a third party.
20. Like most Allstate agents, I look to my "economic interest" in my Allstate book of business as a significant piece of my financial planning and retirement portfolio.
21. It is widely understood that the value of an Allstate agent's "economic interest" in his or her book of business depends on the current and anticipated future revenues generated by that book of business.
22. If the stay is lifted and the IFO is allowed to take effect, it will result in an immediate diminution in value of Florida Allstate agents' "economic interest" in their books of business. For those agents currently in the process of transferring their "economic interest" or in the market to do so, it is reasonable to conclude that many will be unable to proceed with the planned transfers. There will simply be no market if potential buyers do not have an opportunity to grow the business. Consequently, existing agents will be prevented from retiring as planned or from pursuing other career goals and objectives as planned.
23. Like me, my fellow NAPAA members in Florida, and Allstate agents in Florida in general, work daily with individuals and businesses to try to identify the best possible insurance and financial products to meet their goals and objectives.
24. If the stay is lifted and the IFO is allowed to take effect, NAPAA believes, and I personally believe, existing and prospective insurance consumers will face immediate, serious harm.
25. Many Allstate insurance consumers enjoy a premium discount by virtue of carrying multiple lines of insurance with Allstate. If those consumers wish to add another line of insurance while the IFO is in effect, the consumer will not be able to purchase that new line from an Allstate agent and will not be able to obtain the multi-line discount.
26. Similarly, many insurance consumers doing business in Florida with Allstate agents receive policy discounts based on a history of renewal with Allstate. If the stay is lifted and the IFO is allowed to take effect, any such consumers who wish to add a new insurance policy will not be able to obtain such a policy from their

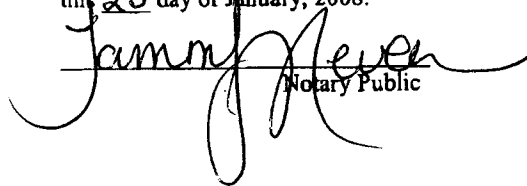
Allstate agent and, therefore, will be deprived of the favorable pricing otherwise available by virtue of their history with Allstate.

27. If the stay is lifted and the IFO is put in place, existing Allstate insurance consumers in Florida will lose product and provider options that are currently available to them. They will be unable to maintain the convenience, comfort, and often favorable pricing of maintaining all of their insurance with their existing Allstate agent. Instead, they will be forced either to split their policies among multiple agents at greater inconvenience and, in all likelihood, at greater expense, or to give up an established relationship of their own choosing with their Allstate agent.
28. Additionally, under certain circumstances, an existing Allstate insurance consumer who seeks simply to "maintain" existing coverage may be unable to do so. For example, in a divorce situation, I am currently able to separate two formerly married people from a single policy and place each with a separate policy. Both individuals continue to be eligible for renewal pricing. However, if I were unable to write new insurance business, I would be unable to address the insurance needs of the former spouse who is coming off of the formerly joint policy.
29. Like many Allstate agents and NAPAA members in Florida, I have worked hard to earn and maintain the high level of trust and confidence placed in me by my clients. I am fearful that many of these clients, the elderly and more vulnerable in particular, will be confused and shaken if I am not able personally to help them address new insurance needs.
30. It has been my experience that insurance consumers benefit most when they have multiple products to compare and from which to select a product that suits their particular needs. At times, this means that a non-Allstate product is the better choice for a particular individual due to product features. Conversely, there are many Allstate products whose unique benefits or features best suit a given consumer's goals and objectives. It is of serious concern to NAPAA, its members, and to me that these products will not be available for the insurance consumer to consider if the stay is lifted and the IFO is allowed to take immediate effect.

Further, affiant sayeth naught.


DALE REVELS

Subscribed and sworn to before me
this 23 day of January, 2008.


Notary Public

