Dear NAAFA,
Here's what a judge thinks about AmFam's agent contract. How can an "accused" agent ever win when AmFam can make the contract say anything they want it to say?
Concerned for the 30-35% about to be accused!

This is a portion of the 7th circuit opinion written by Judge Posner.....

It is odd that such a large insurance company (American Family is number 352 on Fortune's list of the 500 largest American corporations, http://money.cnn.com/magazines/fortune/fortune500/2008/full_list/301_400.html, visited May 18, 2009), should have such a poorly drafted contract with its agents. (The contract keeps landing the company in court. See, e.g., *Clifton v. American Family Mutual Ins. Co.*,

507 F.3d 1102 (8th Cir. 2007); *Teets v. American Family Mutual Ins. Co.*, 272 S.W.3d 455 (Mo. App. 2008); *McClure v. American Family Mutual Ins. Co.*, 29 F. Supp. 2d 1046 (D. Minn. 1998).) It is unclear whether after the agent has been on board for two years the company can terminate the agency for purely economic reasons, even with notice, unless it terminates similar agreements with other agents. (The Ninth Circuit, in an unpublished opinion, held that it

can, *Adams v. American Family Mutual Ins. Co.*, 1999 WL 386913, at *3 (9th Cir. May 21, 1999), but over a dissent.) Whether the agent is entitled to an opportunity to cure "undesirable performance" is not spelled out either, but has been left to be inferred from the phrase "if not corrected." *Teets v. American Family Mutual Ins. Co.*, *supra*, 272 S.W.3d at 463-64; *McClure v. American Family Mutual Ins. Co.*, *supra*, 29 F. Supp. 2d at 1067; cf. *Filmline (Cross-Country) Productions, Inc. v. United Artists Corp.*, 865 F.2d 513, 517 (2d Cir. 1989). No deadline for cure is specified. And one might have expected the requirement of notice and of an opportunity to cure to be intended for agents whose performance was inadequate or unsatisfactory, rather than "undesirable," which has a hint of turpitude that blurs the difference between "undesirable" and "dishonest" performance. The difference is further blurred by the inclusion in the grounds for termination without notice of any practices "prejudicial to" the insurance company. One would think that "undesirable performance" was such a practice, yet such an interpretation would make the requirement of six months' notice evaporate.

The clumsy drafting that has given rise to this case is the use of the word "dishonest" to designate the situations

in which six months' notice is not required. In the employment context the word has a primary connotation of theft or fraud. See, e.g., Kathryn J. Filsinger, *Employment Law for Business and Human Resources Professionals* 259 (2005); Charles H. Fleischer, *Employer's Rights: Your Legal Handbook from Hiring to Termination and Everything in Between* 285 (2004); Shawn Smith & Rebecca Mazin, *The HR Answer Book: An Indispensable Guide for Managers and Human Resources Professionals* 184 (2004). To call an agent who disobeys his principal's directive (as the plaintiffs did, for the company's employee manual makes clear that signatures on applications for insurance must be authentic) "dishonest" if the agent had no pecuniary stake sounds a little strange. But only a little; for among the other meanings of "dishonesty," two clusters describe the plaintiffs' behavior: (1) "a breach of trust, a 'lack of . . . probity or integrity in principle,' 'lack of fairness,' or a 'disposition to . . . betray,' " and (2) "deceitful behavior, a 'disposition to defraud [or] deceive,' or a 'disposition to lie, cheat, or defraud.' " *United States v. Brackeen*, 969 F.2d 827, 829 (9th Cir. 1992) (citations omitted); see also *Midway School District v. Griffeath*, 172 P.2d 857, 860 (Cal. 1946); R. Bruce McAfee & Paul J. Champagne, *Effectively Managing Troublesome Employees* 74-75 (1994); P.J. Fitzgerald, *Criminal*

Law and Punishment 37 (1962).