

IN THE CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

National Association of Professional Allstate  
Agents, Inc., an association, *et al.*,

*Plaintiffs,*

v.

Allstate Insurance Company,

*Defendant.*

Civil Case No. 21-L-7947  
Judge Margaret A. Brennan

**Plaintiff National Association of Professional Allstate Agents, Inc.'s Reply  
Memorandum of Law in Support of Its Motion for Preliminary Injunction**

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Pls.' Reply in Supp. of  
Prelim. Inj.

Plaintiff National Association of Professional Allstate Agents, Inc. (“NAPAA”), submits this Reply in support of its Motion for Entry of Preliminary Injunction, asking the Court to enjoin Defendant Allstate Insurance Company (“Allstate”) from requiring Allstate Exclusive Agency Owners (“EA(s)”) to use Allstate Agency Voice (“AAV”) as the sole means of telephonic communication in each EA’s agency.

### **Background**

In 2020, Allstate announced its implementation of AAV, a centralized telephone system. Allstate mandates all EAs must implement and use AAV. The system is rolling out over the course of 2021, with full implementation to be achieved by 2022. *See* Pl. Mot. for Pl. Exhibit 1. Allstate states that its interest in implementing the AAV program relates to its exposure to liability from: (1) allegations that EA’s have violated the Telephone Consumer Protection Act (“TCPA”); and (2) cybersecurity breaches. Def.’s Opposition at 14. Only the approximately 8,000 EAs are required to use AAV. Allstate has approximately 58,000 agents who are not EAs (independent agents, agents aligned with National General, and other cluster/aggregator groups). *See* Pl. Mem. in Supp. of Mot. for Prelim. Inj. at 2. (“PI Mem.”). None of these other types of agents are required to use AAV, but all of them can access Allstate’s quoting system. *Id.* Much of the data Allstate claims to want to protect through AAV can be accessed by other agents who are not subject to its requirements. *Id.*

Allstate contends no separate contract exists regarding implementation of the AAV system, leaving the terms of the EA Agreement to govern the relationship between Allstate and EAs. Def.’s Opp’n to Pl.’s Mot. Prelim. Inj. at 5-6. (“Def.’s Opposition”). The express terms of

the EA Agreement specify that the EAs are required to “supply and maintain” their own telephone systems. Ver. Compl. Exhibit. 3, at 32.

Allstate can monitor all calls to and from EAs via AAV, effectively destroying their privacy. *See* PI Mem. at 3. EAs who have begun the implementation of AAV observed that Allstate’s AAV installation contractor uploaded their personal contact information to Allstate. *See* Ross Decl., Ex. 1. EAs enjoy the ability to use the telephone provider of their choosing (and to choose between applicable rates), as well as the ability to set up equipment in the manner preferred by the agency. PI Mem. at 3. Currently, EAs cannot choose their own telephone provider with each provider’s applicable rates because Allstate mandates AAV’s use. *Id.*

Allstate threatens to terminate the EA’s agency altogether, if the EA does not implement AAV. PI. Mem., Ex. 3. Although Allstate threatens termination, Allstate does not provide a functioning method to answer EA’s questions about how to implement AAV. PI Mem. at 4. EAs who have tried to connect with Allstate to ask questions about AAV implementation have been unable to obtain timely, satisfactory assistance. *Id.* Allstate has admitted agents have experienced “outages involving impaired system functionality and call quality” and issues with “server infrastructure.” *Id.*

### **Argument**

#### **I. The EA Agreement gives EAs a clearly ascertained right to supply and maintain their own telephone systems.**

A clearly ascertained legal right is a “substantive interest recognized by statute or common law.” *Kilhafner v. Harshbarger*, 245 Ill. App. 3d 227, 229 (1993). The terms of an agreement, if unambiguous, should generally be enforced as they appear, and those terms will

control the rights of the parties. *Coghlan v. Beck*, 984 N.E. 2d 132, 143 (Ill. Ap. C. 2013).

The EA Agreement contains clear language regarding the EAs responsibility toward the day-to-day running of their agency. Specifically, “agencies will be required to supply and maintain at their own expense . . . telephone systems.” Ver. Compl. Ex. 3, at 32. There is no ambiguity in this provision of the EA Agreement.

Allstate attempts to circumvent this clear language by stating that “this section applies to agencies using technology supplied by the agency to conduct Allstate Business.” Def.’s Opposition at 5. Allstate seems to argue that a provision which gives the EA the ability to supply and maintain her own telephone system can be made superfluous by Allstate’s mandate to use its system.

“Courts will [] avoid interpretations that render contract terms surplusage.” *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 479 (1998). Citing *Hufford v. Balk*, 113 Ill. 2d 168, 172 (1986). Allstate’s interpretation would render the entire section on agencies supplying their own equipment as mere surplusage. It would be a provision that means nothing except when Allstate, in its benevolence, decides that an agency can provide its own equipment.

Allstate does have the right under the EA Agreement to set technology specifications for such equipment. Def.’s Opposition at 6. However, that ability to set specifications does not translate to the ability to mandate the use of a specific system.

Allstate argues that since they own the telephone numbers then they also own the telephone systems. Def.’s Opposition 6. Not only is this contrary to the EA Agreement, it is also contrary to how telephones work. The Agreement provides that EAs will supply and maintain

their own telephone system. Ver. Compl. Ex. 3 at 32. If a telephone number and the telephone itself were one and the same, then anytime someone buys a new phone, she would be required to receive a new telephone number.

## **II. NAPAA members are entitled to injunctive relief.**

NAPAA is entitled to injunctive relief for the breach of the EA Agreement. All the cases Allstate cites in support of their argument are cases in which a party was attempting to enjoin another party from terminating the contract when there had been no breach of the contract. See *Gage v. Village of Wilmette*, 315 Ill. 328 (1924); *S. & F. Corp v. American Express Co.*, 60 Ill. App. 3d 824 (1st Dist. 1978); *Alderman Drugs v. Metropolitan Life Ins. Co.*, 161 Ill. App. 3d 783 (1st Dist. 1987). In each of these cases, a party was attempting to stop the other party from terminating the contract without allegations of breach or bad faith. None are analogous here.

NAPAA asks this Court to enjoin Allstate's AAV mandate because it's a breach of the EA Agreement. A party who materially breaches a contract cannot take advantage of the terms of the contract that benefit that party. *Goldstein v. Lustig*, 154 Ill. App. 3d 595, 599 (1st Dist. 1987). (citing *Robinhorne Constr. Corp. v. Snyder*, 113 Ill. App. 2d 288, 297 (1969)). As such, Allstate cannot point to the termination at will provision in the contract to cover for its breach of the contract.

## **III. NAPAA and its members have no adequate remedy at law.**

Money damages are most often viewed as an appropriate remedy where the plaintiff alleges breach of contract. *Illinois Beta Chapter of Sigma Phi Epsilon Fraternity Alumni Bd. v. Illinois Inst. of Tech.*, 409 Ill. App. 3d 228, 232 (2011) (quoting *Lake in the Hills Aviation*

*Groups, Inc.*, 298 Ill. App. 3d 175, 185 (1998)). However, the law regarding preliminary injunctions does not require that there be a remedy at law, but rather that the remedy be *adequate*. “The existence of a remedy at law does not deprive a court of its equitable power to grant injunctive relief unless the remedy is adequate.” *K.F.K. Corp v. American Continental Homes, Inc.*, 31 Ill. App. 3d 101, 1021 (1975).

For a remedy at law to be adequate, it “must be clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.” *Id.* Injunctive relief is necessary “when money is insufficient to compensate the injury or when the injury cannot be properly quantified in terms of money.” *Lumbermen’s Mut. Cas. Co. v. Sykes*, 384 Ill. App. 3d 207, 231 (2008).

EAs who have begun the implementation of AAV observed that Allstate’s AAV installation contractor uploaded their personal contact information to Allstate. *See* Ross Decl., Ex. 1. This loss of privacy is not compensable by monetary damages.

Allstate argues that any relief would be adequately remedied by money damages. In this case, these damages would not be adequate. EAs risk being terminated by Allstate if they do not comply with Allstate’s breach. If and EA is terminated, she is not ensured she will be able to sell her book of business for its full market value. As such, no simple way exists to accurately apply monetary damages. The most just way for this situation to be resolved is to enjoin Allstate’s AAV requirement, thereby honoring the EA Agreement.

#### **IV. The balance of hardship weighs in NAPAA’s favor.**

When balancing the hardships faced by both parties, the Court “must weigh the benefits

of granting the injunction against the possible injury to the opposing party from the injunction.”

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*Schweickart v. Powers*, 245 Ill. App. 3d 281, 291 (1993). EAs face termination, increased costs, and other possible disciplinary actions if the injunction is not granted. Allstate’s harm, if any, is not certain. Allstate states that its interest in implementing the AAV program “is substantial,” pointing to its exposure to liability from: (1) allegations that EA’s have violated the TCPA; and (2) cybersecurity breaches. Def.’s Opposition at 14.

First, Allstate has several avenues available to limit its liability exposure, short of breaching the EA Agreement by requiring EAs to implement AAV. Allstate admits its primary ability to limit this exposure: the EA’s requirement to indemnify Allstate. *Id.* at 4. Allstate argues that “EAs have no meaningful ability to indemnify Allstate.” *Id.* Allstate’s breach of the EA Agreement is not justified by its alleged difficulty in enforcing its provisions. Allstate presumably knows indemnity insurance is available to mitigate its liability exposure. Allstate could conduct more and better security training with EAs. Allstate could implement other security measures to mitigate its exposure. Instead of any of these options, Allstate chose to mandate AAV, breaching the EA Agreement in the process.

Second, Allstate leaves unaddressed the liability exposure it would retain from the 58,000 other types of agents that can misuse Allstate’s data. Allstate has approximately 8,000 EAs, which comprises just 14% of the agents who can “expose” Allstate to liability. Mandating AAV for 14% of the potential exposure, while leaving unaddressed the remaining 86% of its alleged exposure undercuts Allstate’s argument that mandating AAV to EAs was the only possible solution it could use to address its liability exposure.

Any harm Allstate has sustained is due solely to their decision to breach the EA Agreement. It cannot use the damages it sustains from its breach to prevent this Court from providing an equitable remedy to the EAs harmed by Allstate's breach.

### Conclusion

For the foregoing reasons, NAPAA respectfully requests that this Court grant NAPAA's request for a preliminary injunction. NAPAA further requests such other relief as this Court deems just and appropriate.

November 5, 2021

Respectfully submitted,  
The Bopp Law Firm, PC

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**Certificate of Service**

I certify that the foregoing document was filed on November 5, 2021, using the court's electronic filing system, which will send notice of filing to all counsel of record.

/s/ James Bopp, Jr.  
James Bopp, Jr.

**Exhibit 1 to**  
***Plaintiff National Association of Professional Allstate***  
***Agents, Inc.'s Reply Memorandum of Law in Support of***  
***Its Motion for Preliminary Injunction***

**Declaration of Larry Ross**

**IN THE CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS  
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<p><b>National Association of Professional Allstate Agents, Inc., an association, <i>et al.</i>,</b></p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p><b>Allstate Insurance Company,</b></p> <p style="text-align: right;"><i>Defendant.</i></p>	<p><b>Civil Case No. 21-L-7947</b></p>
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**Declaration of Lawrence Ross**

I, Lawrence Ross, declare:

1. I am a current Exclusive Agent with Allstate Insurance Company, and I have personal knowledge of the facts presented herein.
2. I offer this declaration in support of Plaintiff National Association of Professional Allstate Agents' Reply in Support of Their Motion for Preliminary Injunction in the above-captioned matter.
3. In order to access Allstate's computer system to conduct agency work, Allstate requires me to use a "VIP Code."
4. The VIP Code can be accessed in one of two ways: (1) by downloading and using the VIP App on my cell phone; or (2) by using a Key Fob.

5. If I accessed the VIP Code using the VIP App, I would have to consent to Allstate's user agreement, which allows Allstate to have access to my cell phone and personal contact list. This user agreement states that Allstate will not share the information with any third party.

6. Using the Key Fob to access the VIP Code does not require me to consent to Allstate's access to my cell phone and personal contact list.

7. I have always used the Key Fob to access the VIP Code and have never agreed to allow Allstate to access my cell phone or personal contact list. I have never downloaded anything on my cell phone regarding Allstate.

8. Allstate is requiring my agency to convert to the "Allstate Agency Voice" ("AAV") telephone system.

9. Allstate contracts with a third party ("**Contractor**") to convert agencies to the AAV system.

10. When the Contractor was performing the AAV conversion at my agency, I personally observed on my computer screen that my personal contacts from my personal cell phone were being uploaded into the Allstate system by the Contractor.

11. At the time I noticed the upload described in paragraph 10, my personal email was open on my computer. My personal contacts are available either through my personal cell phone or through my personal email.

12. When I noticed the upload described in paragraph 10, I questioned the Contractor about this upload of my personal contacts into the Allstate system. The Contractor told me that it always uploaded cell phone information into the AAV system on behalf of Allstate.

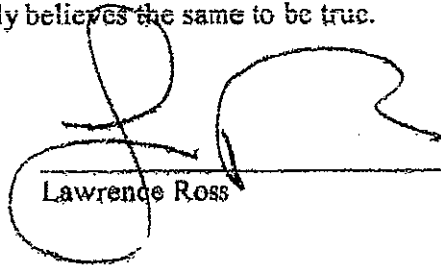
13. I asked the Contractor to stop the conversion to AAV and to stop uploading my personal contact information to Allstate, and he did.

14. I had never given Allstate permission to access my personal contact information because I never used the VIP app. Even if I had accessed the VIP app, pursuant to Allstate's user agreement, no third party was to have access to my personal contact information.

15. I personally observed that the Contractor (a third party) accessed my personal contact information and uploaded it to Allstate's AAV system.

Under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: 11-5-2021

  
\_\_\_\_\_  
Lawrence Ross