

Cause No. GN-001634

MICHAEL LEONARD and MICHAEL SAWYER on behalf of themselves and all others similarly situated,

Plaintiffs,

V.

FARMERS INSURANCE EXCHANGE, TRUCK INSURANCE EXCHANGE, FIRE INSURANCE EXCHANGE, MID-CENTURY INSURANCE COMPANY, MID-CENTURY INSURANCE COMPANY OF TEXAS, FARMERS NEW WORLD LIFE INSURANCE COMPANY, FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY, TEXAS FARMERS INSURANCE COMPANY, FARMERS GROUP, INC., collectively doing business as FARMERS INSURANCE GROUP OF COMPANIES

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98TH JUDICIAL DISTRICT

DEFENDANTS' SPECIAL EXCEPTIONS AND ANSWER TO PLAINTIFFS' SIXTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, Mid-Century Insurance Company of Texas, Farmers New World Life Insurance Company, Farmers Texas County Mutual Insurance Company and Texas Farmers Insurance Company (hereinafter sometimes collectively referred to as "Farmers") and Farmers Group, Inc. (hereinafter referred to as "FGI") for their Special Exceptions and Answer to the Plaintiffs' Sixth Amended Petition (the "Petition"), state as follows:

FILED
OCT 27 AM 10:55
JAMES L. ...
CLERK OF DISTRICT COURT
TRAVIS COUNTY, TEXAS

JPC

I.

SPECIAL EXCEPTIONS

1. Farmers and FGI specifically except to the section of the Petition labeled "IV. Cause of Action -- Breach of Contract" on pages 6-11 on the ground that Plaintiffs have failed to comply with TEX. R. CIV. P. 50. This Rule states:

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, so long as the pleading containing such paragraph has not been superseded by an amendment as provided by Rule 65. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth. *[emphasis added.]*

Plaintiffs here attempt to plead a cause of action for the alleged breach of four separate contracts (being one written bilateral contract, and three unilateral contracts) for each of the two Plaintiffs for the years 1995, 1996, 1997 and 1998 for Plaintiff Leonard and the years 1995, 1996, 1997, 1998 and 1999 for Plaintiff Sawyer. In other words, Plaintiffs have lumped together in one alleged "cause of action" 16 different alleged "contracts" for Plaintiff Leonard, and 20 different alleged "contracts" for Plaintiff Sawyer, not to mention the alleged "contracts" for the non-existent plaintiffs who are alleged to be district managers. Farmers and FGI pray that this special exception be sustained, and Plaintiffs be ordered to replead in compliance with Rule 50.

2. Farmers and FGI specifically except to the allegations of section IV. of the Petition entitled "Cause of Action -- Breach of Contract" which attempts to state a cause of action for breach of contract arising out of a contract between unnamed district managers and defendants, for the

reason that Plaintiffs state no cause of action for breach of contract. Plaintiffs do not plead the existence of a district manager contract between either Plaintiff or any of the Defendants. In *Snyder v. Eanes I.S.D.*, 860 S.W.2d 692, 695 (Tex. App. — Austin 1993, writ denied), the Austin Court stated the elements for a cause of action for breach of contract as follows:

When a cause of action is based on breach of contract, the plaintiff must show that a contract existed between the parties, that the contract created duties, that the defendant breached a duty under the contract, and that the plaintiff sustained damages as a result.

Plaintiffs have not pleaded the existence of a contract between either of them and Defendants, entitling them to a bonus for a district manager, or that either Plaintiff suffered damages as a result of an alleged breach of contract with a district manager. Farmers and FGI pray that this special exception be sustained, and that all alleged causes of action on behalf of district managers for alleged breach of contract be stricken.

3. Farmers and FGI specially except to the portion of the Petition labeled "IV. Cause of Action -- Breach of Contract" insofar as the Plaintiffs attempt to state a cause of action for breach of contract for an Underwriting Contract Value Bonus for the reason that Plaintiffs have failed to state a cause of action for a breach of contract. The Underwriting Contract Value Bonus arises under the terms and provisions of a written Agent Appointment Agreement between each of the Plaintiffs individually and Farmers Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, Mid-Century Insurance Company of Texas, Farmers New World Life Insurance Company, Farmers Texas County Mutual Insurance Company and Texas Farmers Insurance Company. This written Agent Appointment Agreement containing the provision for an Underwriting Contract Value Bonus is referred to as the form number 32-1106 agreement.

Accordingly, the right to be eligible for an Underwriting Contract Value Bonus is predicated on the existence of form number 32-1106 Agent Appointment Agreement, and those agents who have not executed that form of appointment agreement are not eligible for an Underwriting Contract Value Bonus. Once eligibility is established, qualification for the Underwriting Contract Value Bonus is based on the qualifications set forth in the Achievement Award Brochures each year for the Underwriting Contract Value Bonus as well as the Rules and Quality Standards, also set forth in the Achievement Award Brochures each year. Neither of the Plaintiffs plead the existence of a contract between them and Farmers for an Underwriting Contract Value Bonus. More particularly, neither Plaintiff pleads that he is party to form number 32-1106 Agent Appointment Agreement as of January 1 of the qualifying year, nor have either of the Plaintiffs pleaded any facts to show that either of them were otherwise eligible to be awarded an Underwriting Contract Value Bonus.¹ Farmers and FGI pray that this special exception be sustained, and that the Plaintiffs be required to amend their Petition to show the existence of a contract between each of the Plaintiffs and the Defendants, for each of the years that the Plaintiffs claim such contract exists, and the breach of each such contract alleged by the Plaintiffs.

4. Farmers and FGI specially except to the portion of the Petition labeled "IV. Cause of Action -- Breach of Contract" insofar as the Plaintiffs attempt to state a cause of action for breach of contract for a Life Performance Bonus for the reason that Plaintiffs have failed to state a cause

¹ Farmers and FGI submit that should the Plaintiff Sawyer plead the existence of and breach of a contract for an Underwriting Contract Value Bonus for the years 1996 through 1999, the allegation of breach will be in violation of TEX. R. CIV. P. 13 and Chapters 9 and 10 of the Texas Civil Practice & Remedies Code for the reason that the Plaintiff Sawyer qualified for the maximum Underwriting Contract Value Bonus allowable.

of action for a breach of contract to pay the Life Performance Bonus. Neither of the Plaintiffs, for any of the years pleaded, have alleged that they met the qualification requirements to be entitled to a Life Performance Bonus. The Achievement Award Brochures describing the Life Performance Bonus constitute an offer by the companies who are parties to the Agent Appointment Agreement, which offer much be accepted strictly in accordance with its terms, and the rights of the Plaintiffs are limited by the terms of the offer, and by the conditions and rules for the Life Performance Bonus. The Plaintiffs are required to plead that they complied with the terms of the offer, in order for there to give rise to the existence of a contract for the Life Performance Bonus. Farmers and FGI pray that this special exception be sustained, and that the Plaintiffs be ordered to replead in conformity with this special exception.

5. Farmers and FGI specially except to the portion of the Petition labeled "IV. Cause of Action -- Breach of Contract" insofar as the Plaintiffs attempt to state a cause of action for breach of contract for an Auto Retention Bonus for the reason that Plaintiffs have failed to state a cause of action for a breach of contract to pay the Auto Retention Bonus. Neither of the Plaintiffs, for any of the years pleaded, have alleged that they met the qualification requirements to be entitled to an Auto Retention Bonus. The Achievement Award Brochures describing the Auto Retention Bonus constitute an offer by the companies who are parties to the Agent Appointment Agreement, which offer much be accepted strictly in accordance with its terms, and the rights of the Plaintiffs are limited by the terms of the offer, and by the conditions and rules for the Auto Retention Bonus. The Plaintiffs are required to plead that they complied with the terms of the offer, in order for there to give rise to the existence of a contract for the Auto Retention Bonus. Farmers and FGI pray that this

special exception be sustained, and that the Plaintiffs be ordered to replead in conformity with this special exception.

6. Farmers and FGI specially except to the portion of the Petition labeled "IV. Cause of Action -- Breach of Contract" insofar as the Plaintiffs attempt to state a cause of action for breach of contract for an Agency Profitability Bonus for the reason that Plaintiffs have failed to state a cause of action for a breach of contract to pay the Agency Profitability Bonus. Neither of the Plaintiffs, for any of the years pleaded, have alleged that they met the qualification requirements to be entitled to an Agency Profitability Bonus. The Achievement Award Brochures describing the Agency Profitability Bonus constitute an offer by the companies who are parties to the Agent Appointment Agreement, which offer must be accepted strictly in accordance with its terms, and the rights of the Plaintiffs are limited by the terms of the offer, and by the conditions and rules for the Agency Profitability Bonus. The Plaintiffs are required to plead that they complied with the terms of the offer, in order for there to give rise to the existence of a contract for the Agency Profitability Bonus. Farmers and FGI pray that this special exception be sustained, and that the Plaintiffs be ordered to replead in conformity with this special exception.

II.

ANSWER

Farmers and FGI for their answer to the Plaintiffs' Sixth Amended Petition state as follows:

1. Farmers and FGI, pursuant to TEX. R. CIV. P. 92, deny each and every, all and singular the allegations contained in the Plaintiffs' Sixth Amended Petition and demand strict proof thereof.

2. Defendant, Farmers Group, Inc. specifically denies the allegation on page 4 of the Petition that it collectively does business with the other Defendants in this case under the service mark Farmers Insurance Group of Companies. Farmers Group, Inc. specially denies that it does the business of insurance, or that it is even licensed to do the business of insurance in the State of Texas. Farmers Group, Inc. specially denies the allegation that it is “engaged *inter alia*, in the business of selling and providing insurance and/or servicing and managing such policies.”

3. Defendant, Farmers Insurance Exchange specifically denies the allegation on page 4 of the Petition that it is a California corporation. Farmers Insurance Exchange is a reciprocal or interinsurance exchange formed under the laws of the State of California, and doing the business of insurance in Texas pursuant to Chapter 19 of the Texas Insurance Code.

4. Defendant, Truck Insurance Exchange, specifically denies the allegation on page 4 of the Petition that it is a California corporation. Truck Insurance Exchange is a reciprocal or interinsurance exchange formed under the laws of the State of California, and doing the business of insurance in Texas pursuant to Chapter 19 of the Texas Insurance Code.

5. Defendant, Fire Insurance Exchange, specifically denies the allegation on page 4 of the Petition that it is a California corporation. Fire Insurance Exchange is a reciprocal or interinsurance exchange formed under the laws of the State of California, and doing the business of insurance in Texas pursuant to Chapter 19 of the Texas Insurance Code.

6. Defendant, Farmers Texas County Mutual Insurance Company, specially denies the allegation on page 5 of the petition that it is a corporation. Farmers Texas County Mutual Insurance Company is a county mutual insurance company formed under the provisions of Chapter 17 of the Texas Insurance Code.

11. Farmers and FGI, for further answer if any need there be, affirmatively allege and state that the Plaintiffs' claims for breach of contract that arose more than four years prior to the date of the filing of this action are barred by the four year statute of limitations.

12. Farmers and FGI, for further answer if any need there be, affirmatively allege and state that the Plaintiff Leonard has been paid for the Underwriting Contract Value Bonus under the terms and provisions of his Agent Appointment Agreement, and has accepted such payment. Accordingly, Plaintiff Leonard is estopped from complaining about, or has waived any complaint about the payment of or amount of the Underwriting Contract Value Bonus under the terms and provisions of the Agent Appointment Agreement between him and Farmers.

13. Farmers and FGI, for further answer if any need there be, affirmatively allege and state that the Plaintiffs are estopped by their contract (Agent Appointment Agreement) with Farmers, from alleging that FGI is a party to that contract, or to any bonus contract that may have arisen by the Plaintiffs' acceptance of an offer from Farmers. More particularly, the Agent Appointment Agreement defines the "Companies" that are party to the agreement, which definition does not include FGI. The Agent Appointment Agreement specifically provides that "no change, alteration or modification of this Agreement may be made unless it is in writing and signed by the Agent and an authorized representative of the Companies." The Agent Appointment Agreement gives rise to the relationship between the Company and Plaintiffs, and but for the Agent Appointment Agreement, Plaintiffs are not offerees for the various bonus awards described in the Achievement Award Brochures. One of the rules which applies to all of the Achievement Awards is the rule that "production qualifications are based on official Company production records." "Company" means

and refers to the company that appointed the agent under the Agent Appointment Agreement to sell insurance products for the Company.

14. Farmers and FGI, for further answer if any need there be, affirmatively allege and state that Plaintiffs are estopped from asserting that FGI is a party to either the Agent Appointment Agreement or to any of the alleged bonus contracts as a matter of law. More particularly, FGI is not an insurance company, and is not licensed to transact the business of insurance in the State of Texas. TEX. INS. CODE Art. 21.01 prohibits an agent from acting in any manner to aid in the transaction of the business of an insurance company, without that company first procuring a certificate of authority from the Commissioner of Insurance. TEX. INS. CODE Art. 21.14, Sec. 4 prohibits any person from acting as a local recording agent for a company until that person shall have in force a local recording agent's license. Neither of the Plaintiffs possessed a license to conduct the business of insurance on behalf of FGI, nor does FGI have a license to do the business of insurance.

15. Farmers and FGI, for further answer if any need there be, affirmatively allege and state that Plaintiff Sawyer is estopped by his contract with Farmers for an Underwriting Contract Value Bonus from claiming a breach of contract. More particularly, in the years 1996, 1997, 1998 and 1999, the Plaintiff Sawyer received the maximum bonus allowed for an Underwriting Contract Value Bonus, the maximum allowed being 3% of future Contract Value.

16. Farmers and FGI, for further answer if any need there be, affirmatively allege and state that the Plaintiff Leonard breached his Agent Appointment Agreement with Farmers. More particularly, Farmers and FGI would show the court that:

16.1 A true and correct copy of the Agent Appointment Agreement between the Plaintiff Leonard and Farmers is attached hereto marked as Exhibit "A."

16.2 Paragraph B(1) of the Agent Appointment Agreement provides that the agent agrees to:

Sell insurance for the Companies and to submit to the Companies every request or application for insurance for the classes and lines underwritten by the Companies and eligible in accordance with their published Rules and Manuals. All business acceptable to the Companies and written by the Agent will be placed with the Companies.

16.3 The Agent Appointment Agreement between Farmers and Plaintiff Leonard was terminated effective August 2, 1998.

16.4 Prior to the termination of the Agent Appointment Agreement, Plaintiff Leonard opened a competing insurance agency, and upon information and belief, the Plaintiff Leonard either directly or indirectly, through other members of the Alpha & Omega Insurance Agency, wrote business eligible for Farmers in breach of the provisions of the Agent Appointment Agreement.

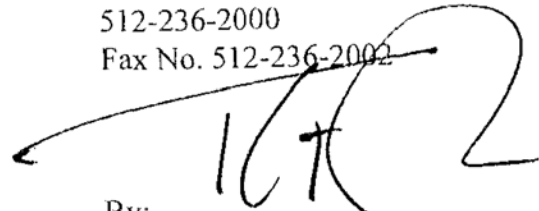
16.5 The Agent Appointment Agreement further prohibits Plaintiff Leonard, for a period of one year, from either directly or indirectly soliciting, accepting, or servicing the insurance business of Farmers' policyholders. Upon information and belief, Farmers alleges that during the one year period following the termination of the Agent Appointment Agreement, the Plaintiff Leonard breached his obligations under the Agent Appointment Agreement and solicited both directly and indirectly, Farmers' policyholders.

16.6 Plaintiff Leonard materially breached his contract with Farmers, and as a direct and proximate result of these breaches of contract, Farmers has lost valuable insurance business. As a result of Plaintiff Leonard's material breaches of contract, he may not now maintain a suit for breach of contract.

WHEREFORE, premises considered, Farmers and FGI pray that Plaintiffs take nothing by their claims, go hence without day, and that Farmers and FGI have such other and further relief as to which they may be entitled either at law or in equity.

Respectfully submitted,

JACKSON WALKER L.L.P.
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Austin, Texas 78701
512-236-2000
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By: _____
Thomas T. Rogers - 17186700

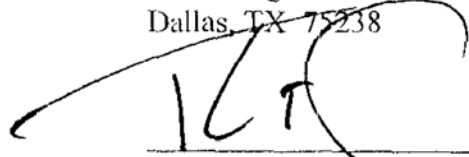
ATTORNEYS FARMERS INSURANCE
EXCHANGE, TRUCK INSURANCE
EXCHANGE, FIRE INSURANCE EXCHANGE,
MID-CENTURY INSURANCE COMPANY, MID-
CENTURY INSURANCE COMPANY OF
TEXAS, FARMERS NEW WORLD LIFE
INSURANCE COMPANY, FARMERS TEXAS
COUNTY MUTUAL INSURANCE COMPANY,
TEXAS FARMERS INSURANCE COMPANY
AND FARMERS GROUP, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2000, a true and correct copy of the foregoing document has been served upon the parties below by facsimile and certified mail, return receipt requested.

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Bobby G. Prior
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