

CAUSE NO. GN-001634

MICHAEL LEONARD and MICHAEL	§	
SAWYER on behalf of themselves	§	IN THE DISTRICT COURT OF
and all others similarly situated,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
FARMERS INSURANCE EXCHANGE,	§	
TRUCK INSURANCE EXCHANGE,	§	TRAVIS COUNTY, TEXAS
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.,	§	
collectively doing business as FARMERS	§	
INSURANCE GROUP OF COMPANIES,	§	
	§	
Defendants.	§	98 th JUDICIAL DISTRICT

PLAINTIFFS' SIXTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Michael Leonard and Michael Sawyer, on behalf of themselves and others similarly situated, for their Sixth Amended Petition state as follows:

I.

NATURE OF THE ACTION

Plaintiffs bring this action as a class action on behalf of a class consisting of all past and current Farmers agents and district managers in 29 states¹ for any year from

¹ The 29 states include: Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.

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1995 through present who was in good standing on December 31 any of those years (hereinafter referred to as the "Class").² Farmers Group, Inc., promulgated the terms of the Agency Profitability Bonus, the Life Performance Bonus, the Contract Value Bonus, and the Auto Retention Bonus³ each year in booklets called the Achievement Awards Booklets (the 1995-1999 Achievement Awards Booklets and the 1994 Field Bulletin are hereinafter collectively referred to as the "Achievement Awards Booklets").⁴ The bonus contracts are identical among all Class Members.

From 1995 to present, Farmers Group, Inc., acting as the party to the bonus contracts, or alternatively, as agent for its undisclosed principals, Defendants Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, and Farmers New World Life Insurance Company (hereinafter collectively referred to as the "Farmers Exchanges"), entered into written bonus contracts with Farmers captive agents in the 29 states, including Plaintiffs, to give them incentive to develop profitable insurance agents which, in turn, would benefit Farmers.⁵ Plaintiffs and the Class Members were entitled to the payment of the bonuses upon performance. Farmers Group, Inc. breached each of the bonus contracts by failing to abide by the terms of the bonus contracts and instead using factors not in the bonus contracts to underpay or

² Excluded from the Class are Defendants herein and any affiliates.

³ The Agency Profitability Bonus, the Life Performance Bonus, and the Contract Value Bonus have been in effect at all times from January 1, 1995 to present. The Auto Retention Bonus has been in effect from January 1, 1999 to present. These four bonuses are collectively referred to as the "Four Cash Bonuses."

⁴ The terms of the bonus contracts are set forth in the yearly Achievement Awards Booklets and the 1994 Field Bulletin announcing the start of the Agency Profitability Bonus. *See*, Exhibits A-F.

⁵ Defendants claim that the Texas companies are also parties to the bonus contracts for Farmers Agents in Texas. The Texas companies are Defendants Mid-Century Insurance Company of Texas, Farmers Texas County Mutual Insurance Company, and Texas Farmers Insurance Company (the "Texas Farmers Companies"). For bonus purposes in Texas, Farmers Group, Inc. also acted as the agent for its undisclosed principals, the Texas Farmers Companies. As such, Farmers Group, Inc., the Farmers Exchanges, and the Texas Farmers Companies stand liable to Farmers agents in Texas for the bonuses. In the alternative, the Texas Farmers Companies are general partners with Farmers Group, Inc. and the Farmers Exchanges for bonus contracts with Farmers agents in Texas.

wholly fail to pay bonuses to which Plaintiffs and the Class Members were contractually entitled.

*Farmers Group, Inc. and the Farmers Exchanges are liable to Plaintiffs and the Class Members through the actions of Farmers Group, Inc. In the alternative, the Defendants Farmers Group, Inc., the Farmers Exchanges, and the remaining companies in the Farmers Insurance Group of Companies were a general partnership for all matters pertaining to bonuses, acting through their general partner, Farmers Group, Inc., in breaching the bonus contracts.*⁶

II. **PARTIES**

PLAINTIFFS

During the contractually specified qualifying period for the bonuses from January 1, 1995 through December 31, 1997,⁷ Plaintiff Michael Leonard was an insurance agent for Farmers Insurance Group of Companies. Plaintiff Michael Leonard is a resident of Dallas County, Texas.

During the contractually specified qualifying period for the bonuses from January 1, 1995 through present, Plaintiff Michael Sawyer has been an insurance agent for the Farmers Insurance Group of Companies. Plaintiff Michael Sawyer is a resident of Dallas County, Texas.

⁶ The Farmers Defendants collectively do business as the Farmers Insurance Group of Companies.

⁷ Leonard was a Farmers agent through late fall of 1998.

DEFENDANTS

Defendants 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., collectively doing business as Farmers Insurance Group of Companies, are companies engaged, *inter alia*, in the business of selling and providing insurance and/or servicing and managing such policies and the companies providing such services.

Defendant Farmers Insurance Exchange is a California corporation with its principal place of business in Los Angeles, California. Defendant Farmers Insurance Exchange is licensed to do business in the State of Texas. Defendant Farmers Insurance Exchange has filed an answer.

Defendant Truck Insurance Exchange is a California corporation with its principal place of business in Los Angeles, California. Defendant Truck Insurance Exchange is licensed to do business in the State of Texas. Defendant Truck Insurance Exchange has filed an answer.

Defendant Fire Insurance Exchange is a California corporation with its principal place of business in Los Angeles, California. Defendant Fire Insurance Exchange is licensed to do business in the State of Texas. Defendant Fire Insurance Exchange has filed an answer.

Defendant Mid-Century Insurance Company is a California corporation with its principal place of business in Los Angeles, California. Defendant Mid-Century

Insurance Company is licensed to do business in the State of Texas. Defendant Mid-Century Insurance Company has filed an answer.

Defendant Mid-Century Insurance Company of Texas is a Texas corporation with its principal place of business in Austin, Texas. Defendant Mid-Century Insurance Company of Texas is licensed to do business in the State of Texas. Defendant Mid-Century Insurance Company of Texas has filed an answer.

Defendant Farmers New World Life Insurance Company is a Washington corporation with its principal place of business in Mercer Island, Washington. Defendant Farmers New World Life Insurance Company is licensed to do business in the State of Texas. Defendant Farmers New World Life Insurance Company has filed an answer.

Defendant Farmers Texas County Mutual Insurance Company is a Texas corporation with its principal place of business in Austin, Texas. Defendant Farmers Texas County Mutual Insurance Company is licensed to do business in the State of Texas. Defendant Farmers Texas County Mutual Insurance Company has filed an answer.

Defendant Texas Farmers Insurance Company is a Texas corporation with its principal place of business in Round Rock, Texas. Defendant Texas Farmers Insurance Company is licensed to do business in the State of Texas. Defendant Texas Farmers Insurance Company has filed an answer.

Defendant Farmers Group, Inc. is a Nevada corporation with its principal place of business in California. Defendant Farmers Group, Inc. is licensed to do business in the State of Texas. Defendant Farmers Group, Inc. has filed an answer.

III.
JURISDICTION AND VENUE

This Court has jurisdiction over Defendants as Defendants conduct business within the State of Texas as set forth in Texas Civil Practice and Remedies Code §17.042. Defendants are licensed to do business in the State of Texas, transact business within the State of Texas, have agents or employees within the State of Texas, and have sufficient minimum contracts with the State of Texas such that jurisdiction over them by Texas courts does not offend traditional notions of fair play and substantial justice.

Venue is proper in Travis County under Texas Civil Practice and Remedies Code §15.002 as it is the county of Defendants' principal office in this state.

Discovery in this lawsuit shall be governed by Texas Rule of Civil Procedure 190.4, Discovery Control Plan Level 3. An appropriate Motion has been filed with the Court and a hearing date set.

IV.
CAUSE OF ACTION - - BREACH OF CONTRACT

Each year that Plaintiffs and the Class Members served as insurance agents or district managers for the Farmers Group of Insurance Companies, between the years of 1995 to present, Defendants Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, Farmers New World Life Insurance Company and Farmers Group, Inc. contractually agreed to pay Plaintiffs and each Class Member bonuses to provide Plaintiffs and the Class Members incentive to build a profitable agency (or supervising same) which, in turn, benefited Farmers. These bonuses were the Agency Profitability Bonus, the Life Performance Bonus, the

Underwriting Contract Value Bonus, and the Auto Retention Bonus⁸ (collectively referred to as the "Four Cash Bonuses").⁹ The terms of each of the four bonuses and the means by which such bonuses are calculated are published each year in Achievement Awards Booklets¹⁰ and are the same for each agent. These bonus contracts are attached hereto as Exhibit A (1995), Exhibit B (1996), Exhibit C (1997), Exhibit D (1998), Exhibit E (1999) and Exhibit F (1994 Field Bulletin).¹¹

Defendant Farmers Group, Inc., acting as the party to the bonus contracts, or alternatively, as the agent for its undisclosed principals, the Farmers Exchanges, developed the four bonuses and devised the information, qualifications, requirements, and criteria of the bonus programs and published this information in the Achievement Awards Booklets that it sent to all Farmers agents in the 29 states. The terms contained in the Achievement Awards Booklets are strictly enforced by Farmers as written.

For each of the four bonuses, the requirements and calculations to measure performance for each Farmers agent are the same (including Plaintiffs Leonard and Sawyer).¹² Farmers uniformly applied the requirements and calculations for each bonus to all Farmers' agents (including Plaintiffs Leonard and Sawyer).¹³ If an agent meets the requirements of one or more of the four bonuses as set forth in the Achievement Awards

⁸ Plaintiff Leonard left Farmers in 1998 and was not eligible for the Auto Retention Bonus that began in 1999. Plaintiff Sawyer is eligible for the Auto Retention Bonus.

⁹ Of these bonuses, the only bonus for which the district managers qualified was the Agency Profitability Bonus. Attached as Exhibit G.

¹⁰ The terms of the bonuses are set forth in the Achievement Awards Booklets and in a 1994 Field Bulletin announcing the start of the Agency Profitability Bonus.

¹¹ The terms of the bonuses have not changed since 1994 unless expressly set forth in the Achievement Awards Booklets. The 1994 Achievement Awards Booklet is attached as Exhibit G.

¹² Likewise, the requirements and calculations for each district manger are the same for the Agency Profitability Bonus.

¹³ District managers are only entitled to the Agency Profitability Bonus. District managers' bonuses are based upon the number of agents within their district qualifying for a bonus. Therefore, class members who are district managers will have their bonuses determined by the proper calculation of the agent class members and thereby have their interests adequately represented by the named class representatives.

Booklet for a given year, he or she is entitled to that bonus in accordance with the calculation set forth in the Achievement Awards Booklet. Finally, the formula used by Farmers to calculate the amount of the bonus is the same for all Class Members (including Leonard and Sawyer).

For Plaintiffs and each Class Member, Farmers Group, Inc, acting as the party to the four bonus contracts, or alternatively, on behalf of its undisclosed principals, promulgated the bonus contracts to Plaintiffs and each Class Member. Plaintiffs and Class Members were entitled to the payment of the bonuses upon their performance of the terms set forth in the four bonuses contained in the Achievement Awards Booklets.

Defendants breached the bonus contracts with Plaintiffs and the Class Members in an identical fashion by:

- (A) failing to use the contractually specified qualifying period to determine the agents' performance in the Agency Profitability Bonus, the Contract Value Bonus, and the Auto Retention Bonus;
- (B) failing to calculate correctly the agents' underwriting gain and the amount of the bonuses in the Agency Profitability Bonus, the Contract Value Bonus, and the Auto Retention Bonus; and
- (C) failing to account properly for renewal policies for the Life Performance Bonus.

Specifically, Farmers uniformly breached the four bonuses in Achievement Awards Booklets for all of its agents in the 29 states, including Plaintiffs, as follows:

- (A) As to the Agency Profitability Bonus, the Auto Retention Bonus, and the Contract Value Bonus, Farmers breached each contract by failing to use the qualifying period specified in the Achievement Awards Booklets to measure the requisite policies-in-force and production count requirements.
- (B) As to the Agency Profitability Bonus, the Auto Retention Bonus, and the Contract Value Bonus, each of which was to reward an agent for his or her profitability, Farmers breached each contract by failing to calculate correctly the agents' underwriting gain by:

- (1) Improperly using a state break-even ratio to calculate the agents' underwriting dollar gain;
- (2) Improperly using losses incurred but not reported ("IBNR") as a factor in calculating the agents' underwriting dollar gain, as follows:
 - (a) Improperly using IBNR as a percentage of the agents' premium to determine the agent's underwriting dollar gain;
 - (b) Improperly using IBNR to calculate the agents' underwriting dollar gain by failing to account for Farmers' interest income on the monies attributable to IBNR, yet debiting the agents with the full amount of the IBNR;
 - (c) Failing to credit the agents' underwriting dollar gain with amounts deducted for IBNR when the actual claims are reported and reserves for those claims are set or if the claims are never reported;
 - (d) Improperly using the same amounts designated as IBNR as two separate losses in the agents' underwriting dollar gain calculation, once in calculating the agent's loss ratio and again as a part of the state break-even ratio;
- (3) Improperly using loss adjustment expenses in calculating the agents' underwriting dollar gain as follows:
 - (a) Improperly charging agents' underwriting dollar gain with unallocated loss adjustment expense;
 - (b) Improperly charging agents' underwriting gain twice for losses designated as the same loss adjustment expense, once in calculation the agents' loss ratio and again as a part of the state break-even ratio;
- (4) Improperly debiting the agents' underwriting dollar gain with a loss for monies Farmers Group, Inc. pays to itself as a management fee;
- (5) Improperly charging the agents' commissions against the agents' underwriting dollar gain; and

- (6) Improperly using reserves to calculate the agents' underwriting dollar gain by failing to account for Farmers' investment income on the monies attributable to reserves yet debiting the agents with the full amount of the reserves.
- (C) As to the Life Performance Bonus, Farmers breached each bonus contract by failing to include renewal policies and commissions in the bonus calculation.

As a result of Defendants' breach of the bonus contracts, Plaintiffs and the Class Members have been underpaid bonuses to which they are entitled and/or have been disqualified from receiving bonuses for which they qualified.

Specifically, for each year from 1995 through 1998, Farmers Group, Inc., acting as the party to the bonus contracts, or alternatively, as an agent on behalf of its undisclosed principals, promulgated the Agency Profitability Bonus, the Life Performance Bonus, and the Contract Value Bonus to Plaintiff Leonard. Plaintiff Leonard fully performed the terms of each of these bonus contracts and was entitled to full payment of all amounts due thereunder. As a result of Defendants' breach, for the years 1995, 1996, and 1997, Farmers wholly failed to pay or underpaid Plaintiff Leonard the bonuses to which he was contractually entitled under the Agency Profitability Bonus, the Contract Value Bonus, and the Life Performance Bonus.

For each year from 1995 through present, Farmers Group, Inc., acting as the party to the bonus contracts, or alternatively, as an agent on behalf of its undisclosed principals, promulgated the Agency Profitability Bonus, the Life Performance Bonus, and the Contract Value Bonus to Plaintiff Sawyer. In 1999, Farmers Group, Inc., acting as the party to the bonus contracts, or alternatively, on behalf of its undisclosed principals, promulgated the Auto Retention Bonus to Plaintiff Sawyer. Plaintiff Sawyer fully

performed the terms of each of the bonus contracts and was entitled to full payment of all amounts due thereunder. As a result of Defendants' breach, for the years 1995 through 1999, Farmers wholly failed to pay or underpaid Plaintiff Sawyer the bonuses to which he was contractually entitled under the Agency Profitability Bonuses, the vested Contract Value Bonus, the Auto Retention Bonus, and the Life Performance Bonus.

Farmers' district managers are entitled to receive Agency Profitability Bonuses based upon the policy count and production count of agents within their district. The District Managers' Agency Bonus Profitability Contracts for 1995-1999 are attached as Exhibits G, H, I, and J. Because of the Farmers' breach and improper calculation of the agents' bonuses, as described above, the district manager class members' bonuses also have been improperly calculated. The district managers' interests are adequately protected by Plaintiffs as the recalculation of the agents' bonuses provide all of the necessary data for the formula by which the district managers' bonuses are to be calculated. The formula by which a district manager's bonus is calculated is the same as to all district managers.

Plaintiffs and the Class Members seek damages to compensate them for Defendants' breach of the bonus contracts. They also seek injunctive relief requiring Defendants to pay Plaintiff Michael Sawyer and the Class Members the correct Underwriting Contract Value Bonus already vested but payable in the future.

All conditions precedent to this action have been performed or have occurred.

V.
CLASS ACTION AVERMENTS

(A) This action is brought by Plaintiffs pursuant to Rules 42a and 42b(4) of the Texas Rules of Civil Procedure on behalf of themselves and all past and current Farmers agents and district managers in 29 states for any year from 1995 through present.

(B) The members of the class are so numerous that joinder of all members is impracticable. There are over 13,000 Farmers agents and 500 district managers in 29 states Agency Profitability Bonus, Contract Value Bonus, Life Performance Bonus, and/or Auto Retention Bonus were miscalculated. Farmers is in possession of exact numbers of the Class Members, including their names, addresses, and telephone numbers.

(C) There are questions of law and fact common to the class (*see* § F below).

(D) Plaintiffs' claims are typical of the claims of the other members of the class in that the four bonus contracts are identical, Farmers' breaches of the four bonus contracts are identical, and the formula by which damages are to be calculated is identical for Plaintiffs and all Class Members.¹⁴ There are no differences between the way the bonuses were applied to Plaintiffs Leonard, Sawyer, and the rest of the Farmers agents in the 29 states. As to the district managers' bonus under the Agency Profitability Bonus, the proper calculation of Plaintiffs and Class Members' bonuses will supply all data necessary to calculate the district managers' bonuses.

(E) Plaintiffs will fairly and adequately protect the interests of the other members of the class; they have retained competent and experienced trial counsel to further ensure such protection; they are actively involved in the litigation; they seek to maximize the amount of recovery for all the Class Members; and they do not have

¹⁴ Plaintiff Leonard was not eligible for the Auto Retention Bonus.

interests antagonistic to or in conflict with those they seek to represent as class representatives.

(F) Questions of law or fact involved herein that are common to the Class predominate over any questions affecting individual members of the Class. These include:

- (1) The same four bonus contracts apply to all the Class Members;
- (2) The requirements of the four bonus contracts were the same for all the Class Members;
- (3) Farmers applied the four bonus contracts the same to all the Class Members;
- (4) The formula by which Leonard and Sawyer's qualification for each bonus was determined is the same formula for all the Class Members;
- (5) The formula by which the amount of Leonard and Sawyer's bonuses were calculated is the same for all the Class Members;
- (6) The interpretation of the contractual provisions will be the same for all the Class Members, including
 - (a) whether Farmers breached the Achievement Awards Booklets by using a state break-even ratio to calculate the agents' underwriting gain;
 - (b) whether Farmers breached the Achievement Awards Booklets by failing to account for investment income on reserves when calculating the agents' underwriting gain, yet debiting the agents with the full amount of the reserves as loss;
 - (c) whether Farmers breached the Achievement Awards Booklets by improperly using reserves set for IBNR as a percentage of the agents' premiums to determine underwriting gain;
 - (d) whether Farmers breached the Achievement Awards Booklets by failing to account for investment income on IBNR reserves in the underwriting gain calculation yet debiting the agents with the full amount of the IBNR reserves as loss;

- (e) whether Farmers breached the Achievement Awards Booklets by failing to credit the agents' underwriting gain with amounts deducted for IBNR when the claims are actually reported and specific reserves are set or if the claims were never reported;
 - (f) whether Farmers breached the Achievement Awards Booklets by using the same amounts designated as IBNR loss twice in calculating underwriting gain, both as a factor in the agents' total losses and as factor in the state break-even ratio in the same bonus formula;
 - (g) whether Farmers breached the Achievement Awards Booklets by using the same amounts designated as loss adjustment expense twice in calculating underwriting gain, both as a factor in the agents' total losses and as a factor in the state break-even ratio in the same bonus formula;
 - (h) whether Farmers breached the Achievement Awards Booklets by charging a management fee as a loss in the underwriting expense percentage portion of the state break-even ratio calculation;
 - (i) whether Farmers breached the Achievement Awards Booklets by failing to use the Qualifying Period set forth in the Achievement Awards Booklets to determine the requisite policies-in-force and production count requirements;
 - (j) whether Farmers breached the Achievement Awards Booklets by charging the agents' commissions against the agents' underwriting gain; and
 - (k) whether Farmers breached the Achievement Awards Booklets by failing to pay bonuses for life insurance policies that are renewed after the first year.
- (7) Farmers' conduct in breaching the bonus contracts is the same for all the Class Members;
 - (8) The determination of whether Farmers Group, Inc., or, in the alternative, Farmers Group, Inc. and its undisclosed principals, or, in the further alternative, Farmers Group, Inc., acting as the general partner for the Farmers Insurance Group of Companies, the Farmers Exchanges, are parties to the bonus contracts is the same for all class members;

A class action is the superior method of handling this controversy.

VI.
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members, pray for judgment as follows:

1. Declaring that this action is a proper class action and certifying Plaintiffs as representatives of the Class under Rule 42 of the Texas Rules of Civil Procedure;
2. Judgment against Farmers Group, Inc. and the Farmers Exchanges¹⁵ for the contractual damages suffered by Plaintiffs and other members of the Class, in an amount in excess of the minimal jurisdictional limits of the Court;
3. Plaintiff Michael Leonard seeks damages not to exceed \$75,000.00;
4. Plaintiff Michael Sawyer seeks damages not to exceed \$75,000.00;
5. Injunctive relief requiring Farmers Group, Inc. and the Farmers Exchanges to pay Plaintiff Sawyer and other members of the Class the correct Underwriting Contract Value Bonus already vested but payable in the future;¹⁶
6. Attorneys' fees;
7. Costs of suit;
8. Prejudgment and post judgment interest at the highest amount provided by law; and
9. Such other and further relief to which Plaintiffs may be justly entitled.

¹⁵ For Farmers agents in Texas, judgment is also sought against the Texas Farmers Companies.

¹⁶ For Farmers agents in Texas, injunctive relief is also sought against the Texas Farmers Companies.

Respectfully Submitted,

PRYOR & BRUCE

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing documents has been served upon counsel for Defendants, Thomas T. Rogers, Esq., JACKSON WALKER, L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas 78701, via United States Certified Mail, Return Receipt Requested on the 15th day of October, 2000.

