



Profitability Bonus for the year 1997 (Leonard) and 1997-1999 (Sawyer), and request that this Court grant partial summary judgment that Plaintiffs take nothing by their breach of contract claim for an Agency Profitability Bonus for the years 1997-1999. In support of this motion, Farmers and FGI state as follows:

In their Eleventh Amended Petition, Affirmative Defense, and Special Exceptions (the "Petition"), Plaintiffs allege a cause of action against Farmers and FGI for breach of contract for an Agency Profitability Bonus, putting the burden on Plaintiffs to prove the essential elements of a cause of action for breach of contract. By this motion, Farmers and FGI contend that there is no evidence to raise a genuine issue of material fact as to the following essential elements of the Plaintiffs' breach of contract claim for an Agency Profitability Bonus for the years 1997-1999:

- (i) There is no evidence that Farmers or FGI breached any contractual duty to Plaintiffs Leonard or Sawyer; and
- (ii) There is no evidence that Plaintiffs Leonard or Sawyer suffered damages as a result of a breach of a contractual duty owed by Farmers or FGI to either of them.

**I.**

**UNDISPUTED FACTS**

Plaintiffs Sawyer and Leonard were appointed as Agents to sell insurance for Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, Farmers New World Life Insurance Company, Farmers Texas County Mutual Insurance Company and Texas Farmers Insurance Company (collectively "Farmers") under a written Agent Appointment Agreement. Sawyer's Agent Appointment Agreement (Exhibit "1") is still in effect.

Leonard's Agent Appointment Agreement (Exhibit "2") was terminated in August 1998. FGI is not named as a party to Leonard's or Sawyer's Agent Appointment Agreement.

Plaintiffs each allege that they had a contract for an Agency Profitability Bonus: Plaintiff Sawyer for the years 1995-1999 and Plaintiff Leonard for the years 1995-1997.

Every year, one of the requirements of Farmers for an Agency Profitability Bonus is that the Agent have a combined net underwriting dollar gain for Auto, Fire and Commercial policies in the bonus year, except in 1998 when no specifications were set out in the Achievement Awards Brochure for this bonus. (Exhibit 3). Every year, one of the rules promulgated by Farmers is that "production qualifications are based upon official Company production records for the qualifying period for each award." (Exhibit 3). For the Agency Profitability Bonus, the official records are the Farmers Experience Analysis and Combined Profitability Report. (Exhibit 3.)

The official records of Farmers for Plaintiff Sawyer show that he had a combined underwriting dollar: (i) gain of \$230,141 in 1997; (ii) gain of \$368,110 in 1998; and (iii) gain of \$332,305 in 1999 for his Auto, Fire and Commercial policies. (Exhibit 4). Sawyer was paid an Agency Profitability Bonus as follows:

<u>YEAR</u>		<u>BONUS PAID</u>
1997	-	\$ 9,989
1998	-	\$18,409
1999	-	\$16,615

The official records of Farmers for Plaintiff Leonard show that he had a combined underwriting dollar gain of \$259,608 in 1997. (Exhibit 5). Leonard was paid an Agency Profitability Bonus in 1997 of \$9,989. Since Leonard terminated in August, 1998, he was not eligible for a bonus that year because he was not an Agent in good standing on December 31, 1998. In sum, both

Leonard and Sawyer were paid the amount to which they were entitled for an Agency Profitability Bonus during the years 1997-1999, and neither Farmers nor FGI breached any contractual duty to Plaintiffs.

## II.

### ARGUMENT AND AUTHORITIES

1. *A CAUSE OF ACTION FOR BREACH OF CONTRACT REQUIRES A CONTRACT, A BREACH OF A DUTY UNDER THE CONTRACT AND DAMAGES.*

When a plaintiff alleges a cause of action for breach of contract, the plaintiff has the burden of proving that a contract exists between plaintiff and defendant, that the contract created duties, that defendant breached a duty under the contract, and that the plaintiff sustained damages as a result.

*Snyder v. Eanes I.S.D.*, 860 S.W.2d 692, 695 (Tex. App. — Austin 1993, writ den.).

The fundamental flaw with Plaintiffs' claims is that they do not allege a breach of a duty owed them under a contract. All of the Plaintiffs' complaints about the Agency Profitability Bonus for 1997-1999 go to the specifications or qualifications contained in Farmers' offer. In making its offer of an Agency Profitability Bonus, Farmers can specify anything in the offer it pleases. It is not until that offer is accepted, in strict accordance with its terms, that a contract and duties under that contract arise.

It is well settled contract law that the formation of an enforceable contract requires an offer and acceptance, supported by consideration.<sup>1</sup> In this case, the Achievement Award Brochures furnished by Farmers to their Agents are not "bonus contracts" as alleged by Plaintiffs. Rather, the

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<sup>1</sup> *Nickerson v. E.I.L. Instruments, Inc.*, 874 S.W.2d 936, 939 (Tex. App. — Houston [1<sup>st</sup> Dist.] 1994, writ denied).

materials published by Farmers to its Agents constitute an offer of an Agency Profitability Bonus, which does not ripen into a contract until the Agent performs the specific acts required in that offer.<sup>2</sup>

Another fundamental principle of contract law is where the offeror (Farmers) makes an offer, it can specify any mode of acceptance it pleases.<sup>3</sup> The acceptance of the offer must be strictly in accordance with the terms of the offer, and the offeree (the Farmers' Agent) may not change or qualify the terms of that offer, or the acceptance is invalid.<sup>4</sup> Put another way, the Agent's acceptance cannot alter or vary from the terms of Farmers' offer. When an offer contains a specific mode of acceptance, the offeree must convey his acceptance in the precise mode expressed in the offer in order to create a binding contract.<sup>5</sup> Performance of a series of acts is required for the Agents to accept the offer. The performance of this series of acts is the mode of acceptance specified by Farmers. Here, one of those specific acts required of Plaintiffs is to have a combined net underwriting all-lines dollar gain.

In *Bowlerama of Texas, Inc. v. Miyakawa*,<sup>6</sup> plaintiffs filed suit to recover \$500 as a jackpot prize in a bowling tournament sponsored by Bowlerama. The announcement for the tournament advised entrants that "house rules" would be applicable to the jackpot competition. One of the

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<sup>2</sup> See, *First Texas Savings Assoc. v. Jergins*, 705 S.W.2d 390 (Tex. App. — Ft. Worth 1986, no writ); *Bowlerama of Texas, Inc. v. Miyakawa*, 449 S.W.2d 357 (Tex. Civ. App. — San Antonio 1970, *dism'd.*).

<sup>3</sup> *Franklin Life Ins. Co. v. Winney*, 469 S.W.2d 21, 23 (Tex. Civ. App. — San Antonio 1971, *ref. n.r.e.*); *Davidson v. Times Printing Co.*, 116 P.18, 19 (Wash. 1911) (defendant had a right to attach such conditions to the offer as it saw fit, and require the terms to be strictly complied with).

<sup>4</sup> *United Concrete Pipe Corp. v. Spin-Line Company*, 430 S.W.2d 360, 364 (Tex. 1968).

<sup>5</sup> *Abraham Investment Co. v. Payne Ranch, Inc.*, 968 S.W.2d 518, 525 (Tex. App. — Amarillo 1998, writ denied).

<sup>6</sup> 449 S.W.2d 357 (Tex. Civ. App. — San Antonio 1969, *dism'd.*)

“house rules” was that the competitor’s score had to be kept by a scorekeeper approved by Bowlerama’s manager. The “house rules” were in writing and posted on a bulletin board at Bowlerama. The plaintiffs’ score had not been kept by an official scorer. The court found plaintiffs had not accepted Bowlerama’s offer, holding:

Under these circumstances plaintiffs cannot recover. The rights of a contestant who has performed the act required in the promoter’s offer are limited by the terms of the offer, that is, by the conditions and rules of the contest as made public. *Endres v. Buffalo Auto Dealers Ass’n*, 29 Misc.2d 756, 217 N.Y.S.2d 460 (1961); *Scott v. People’s Monthly Co.*, 209 Iowa 503, 228 N.W. 263, 67 A.L.R. 413 (1929); *Anno.*: 87 A.L.R.2d 651, 671 (1963).<sup>7</sup>

In this case, the “rules of the contest” for the Agency Profitability Bonus are embodied in the Achievement Awards Brochures, and the Agents Guide, which had been furnished, in writing, to both Plaintiffs.

Sawyer accepted the offer for an Agency Profitability Bonus by meeting the qualifications set out in the award brochures for the years 1997-1999. Leonard accepted the offer in 1997. The requirements in the offer, however, are not duties owed by Farmers to Plaintiffs under a contract. They are simply requirements set by Farmers for acceptance of an offer. Plaintiffs’ allegations about Farmers’ calculation of underwriting gain are an impermissible attempt to alter or vary the terms of the offer made by Farmers. Based upon the terms of its offer and Plaintiffs’ performance, Farmers fulfilled its obligations to Leonard in 1997 and Sawyer in 1997-1999 by paying them the amount to which they were entitled under the Agency Profitability Bonus.

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<sup>7</sup> *Id.* at 359; *See also Galveston County Fair & Rodeo v. Glover*, 880 S.W.2d, 12, 121 (Tex. App. — Texarkana 1994, denied) (in order to be entitled to rewards of the contest (offer) it was necessary for contestant to accept the offer by performing all obligations of the offer).

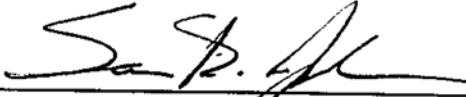
The method of calculating underwriting gain has been in the Agents Guide for Farmers since at least 1993. These are the "house rules." They were published to Plaintiffs, and they are subject to such rules when they decide whether or not to accept the offer of Farmers. Leonard's and Sawyer's rights are limited by the terms of the offer. In other words, they have no contractual right to alter or vary Farmers' method of calculating underwriting gain.

Plaintiffs have no evidence that Farmers or FGI breached any duty owed to them under an Agency Profitability Bonus contract, or that they suffered any damages as a result of any breach of contract.

WHEREFORE, premises considered, Farmers and FGI pray that they have and recover partial summary judgment against the Plaintiffs Michael Sawyer and Michael Leonard, that they take nothing by their claims for breach of contract for an Agency Profitability Bonus for the years 1997-1999, 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,

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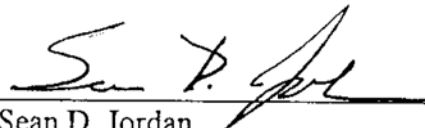
ATTORNEYS FARMERS INSURANCE  
EXCHANGE, TRUCK INSURANCE EXCHANGE,  
FIRE INSURANCE EXCHANGE, MID-CENTURY  
INSURANCE COMPANY, MID-CENTURY  
INSURANCE COMPANY OF TEXAS, FARMERS  
NEW WORLD LIFE INSURANCE COMPANY,  
FARMERS TEXAS COUNTY MUTUAL  
INSURANCE COMPANY, TEXAS FARMERS  
INSURANCE COMPANY AND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

Certificate of Service

I hereby certify that on this 14th day of March, 2001, a true and correct copy of the foregoing document has been served upon the parties below by facsimile (without exhibits) and Lone Star Overnight Delivery (with exhibits).

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