

DISTRICT COURTS CIVIL

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,  
and FARMERS GROUP, INC.,  
collectively doing business as FARMERS  
INSURANCE GROUP OF COMPANIES,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98<sup>th</sup> JUDICIAL DISTRICT

**CLASS CERTIFICATION ORDER AND  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Came on for hearing on April 17-20, 23 and September 5, 2001, Plaintiffs' Motion for Class Certification (the "Motion"). The Court, having reviewed the Court file, pleadings, briefs, summary judgment and certification exhibits, certification briefs and responses, parties' briefs on Class Definition, summary judgment motions and responses, summary judgment arguments, and six days of presentation of evidence and testimony at the certification hearing (collectively, the "Record"), and in accordance with the Texas Rules of Civil Procedure, specifically Texas Rule of Civil Procedure 42(a) and (b)(4), and relevant law, grants the Motion as set forth below. Further,

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the Court, in addition to reviewing the pleadings, has undertaken an analysis of the claims, defenses, relevant facts, and applicable law regarding the certification issue. The Court's order is based on all matters set forth in the Record, which support this order, and the Court's observations and assessment of the witnesses and counsel.

**WHEREFORE, THE COURT ORDERS** that this action shall proceed as a class action pursuant to Texas Rule of Civil Procedure 42, and more specifically, Rule 42(a) and (b)(4), on behalf of a plaintiff class defined as follows:

**CLASS DEFINITION**

A class consisting of all past and current agents of the Farmers Exchanges<sup>1</sup> in the 29 states<sup>2</sup> who belong to one or more of the following subclasses:

**Subclass I:** As to the Agency Profitability Bonus, agents who, pursuant to Defendants' records, (a) for any year from 1995 through 1999, were agents as of December 31 for any one of those years, and (b) met the all-lines production, policies-in-force and/or paid life policies qualifications set forth in the corresponding yearly Agents Achievement Awards booklets from 1995 through 1999;

**Subclass II:** As to the Underwriting Contract Value Bonus, agents who, pursuant to Defendants' records, (a) for any year from 1995 through 1999, were agents as of December 31 for any one of those years, (b) were appointed under the 32-1106 (or 32-1107 in Michigan) Agent Appointment Agreement as of January 1 of any year from 1995 through 1999, and (c) met the policies-in-force and auto new business policies eligibility requirements set forth in the corresponding yearly Agents Achievement Awards booklets from 1995 through 1999 and did not receive the maximum 3 percent contract value bonus in any such year;

**Subclass III:** As to the Auto Retention Bonus, agents who, pursuant to Defendants' records, (a) for 1999, were agents as of December 31, and (b) met the production count, auto

<sup>1</sup> The Farmers Exchanges are defined herein as Defendants Farmers Insurance Exchange, Truck Insurance Exchange, and Fire Insurance Exchange and Defendant Farmers New World Life Insurance Company (hereinafter collectively referred to as the "Farmers Exchanges").

<sup>2</sup> The 29 states are 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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policies-in-force and Customer Loyalty Ratio qualifications set forth in the 1999 Agents Achievement Awards booklet;

**Subclass IV:** As to the Life Performance Bonus, agents who, pursuant to Defendants' records, (a) for any year from 1996 as of 1999, were agents through December 31 for any one of those years, and (b) met the life lapse ratio qualifications set forth in corresponding yearly Agents Achievement Awards booklets from 1996 through 1999 (except career agents because they are exempt from the life lapse ratio qualifications).<sup>3</sup>

**IT IS FURTHER ORDERED**, that the following person or persons shall serve as the representative parties on behalf of all members of the class pursuant to Rule 42:

**Subclass I, II, and IV:** Michael Leonard and Michael Sawyer.

**Subclass III:** Michael Sawyer.

**IT IS FURTHER ORDERED** that the following persons shall serve as Class Counsel on behalf of all members of the class pursuant to Rule 42:

**Subclass I, II, III, and IV:** Bobby Pryor, lead counsel, and Dana Bruce of Pryor & Bruce, 302 N. San Jacinto, Rockwall, Texas 75087 (phone 972-772-3933, toll free 1-888-335-4472, fax 972-771-8343, e-mail *PryorBruceLaw@aol.com*) and Melanie Hunter, Robert Kalinke, and Dean Boyd of Hunter, Kalinke & Boyd, 11325 Pegasus Street, Suite 265E, Dallas, Texas 75238 (phone 214-265-0265, toll free 1-800-436-0911, fax 214-265-1199, e-mail *MHunter@nitnet.net*).

**IT IS FURTHER ORDERED** that both parties and their lawyers shall use due care when discussing this lawsuit with Class Members, or when disseminating information about this lawsuit to Class Members. In other words, the parties and their lawyers are not to contact Class Members in any way that is designed to increase or decrease class size based on threats or promises. While the court does not order a specific restraint on communications at this time, the

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<sup>3</sup> Excluded from the Class Definition are Defendants and Defendants' affiliated companies.

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policies-in-force and Customer Loyalty Ratio qualifications set forth in the 1999 Agents Achievement Awards booklet;

**Subclass IV:** As to the Life Performance Bonus, agents who, pursuant to Defendants' records, (a) for any year from 1996 as of 1999, were agents through December 31 for any one of those years, and (b) met the life lapse ratio qualifications set forth in corresponding yearly Agents Achievement Awards booklets from 1996 through 1999 (except career agents because they are exempt from the life lapse ratio qualifications).<sup>3</sup>

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court encourages both parties and their lawyers to conduct their communications in a good faith and common sense manner so as to prevent the necessity of such a restraint in the future.

IT IS FURTHER ORDERED that Defendants' motion to stay discovery pending an interlocutory appeal of this Order is granted.

IT IS FURTHER ORDERED that Defendants' oral motion to the Court on September 5, 2001, to stay the filing of any summary judgment motions pending an interlocutory appeal of this Order is granted.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**NUMEROSITY**

The Court concludes that each subclass satisfies the numerosity requirement. The following is the minimum number of Class Members for each subclass:

**Subclass I:** 1995 - 3,734  
1996 - 3,069  
1997 - 3,534  
1998 - 2,172  
1999 - 2,669

**Subclass II:** 1995 - 595  
1996 - 616  
1997 - 710  
1998 - 610  
1999 - 659

**Subclass III:** 1999 - 1,820

**Subclass IV:** 1996 - 1,364  
1997 - 1,121  
1998 - 1,222  
1999 - 1,104

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The joinder of all members is not practicable in view of the size of each subclass and judicial economy, the nature of the action, geographical locations of class members, and the likelihood that class members would be unable to prosecute individual lawsuits.

### COMMONALITY

Issues are common to the Class Members in each subclass because (1) the same bonus documents apply to all Class Members, (2) the requirements of the bonus documents were the same for all Class Members, (3) Defendants applied the bonus documents the same to all Class Members, (4) the formula by which the qualifications for each bonus were determined is the same for all Class Members, and (5) the formula by which the amount of each bonus was, and allegedly should be, calculated is the same for all Class Members.

Therefore, the court finds that there are questions of law or fact common to the class.

### TYPICALITY

#### 1. Subclasses I, II, and IV.

The court finds that Mr. Leonard and Mr. Sawyer allege that they did not receive the relevant bonuses for which they were entitled due to the method of calculation that the defendants employed. The court finds that the same events and/or course of conduct giving rise to the claims of Mr. Leonard and Mr. Sawyer give rise to the claims of the other members of Subclasses I, II, and IV, respectively. Furthermore, the claims of Mr. Leonard and Mr. Sawyer and those of the other members of Subclasses I, II, and IV, respectively, are based upon the same legal theories. The court finds that Mr. Leonard's and Mr. Sawyer's claims are substantially similar to those held by Subclasses I, II, and IV, and that there is a nexus between Mr. Leonard's and Mr. Sawyer's injuries and the injuries to Subclasses I, II, and IV.

The Court therefore concludes that the claims of Mr. Leonard and Mr. Sawyer are typical among the members of Subclasses I, II, and IV, respectively.

**2. Subclass III.**

The court finds that Mr. Sawyer alleges that he did not receive the relevant bonus for which he was entitled due to the method of calculation that the defendants employed. The court finds that the same events and/or course of conduct giving rise to the claims of Mr. Sawyer give rise to the *claims of the other members of Subclass III. Furthermore, the claims of Mr. Sawyer and those of the other members of Subclass III are based upon the same legal theories. The court finds that Mr. Sawyer's claims are substantially similar to those held by Subclass III and that there is a nexus between Mr. Sawyer's injury and the injury to each member of Subclasses III.*

The Court therefore concludes that the claims of Mr. Sawyer are typical among the members of Subclass III.

**ADEQUACY OF REPRESENTATION**

The Court concludes that the class representatives, Leonard and Sawyer, are adequate representatives for Subclasses I, II, and IV and that class representative Sawyer is an adequate representative for Subclass III. *Adequate representation embodies two separate concepts - class representatives and class counsel.*

**Class Representatives**

The court finds that the representative parties of the subclasses will fairly and adequately protect the interests of the subclasses. First, the interests of Mr. Leonard and Mr. Sawyer are in no way antagonistic to the members of Subclasses I, II, and IV. Furthermore, the interests of Mr. Sawyer are in no way antagonistic to the members of Subclass III. Each of the Plaintiffs demonstrated personal integrity, sufficient knowledge, interest and understanding of the litigation, and belief in the legitimacy of their grievances. They showed that they are willing to participate in the lawsuit and to travel to Austin when necessary. They will rely upon counsel so

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long as they are satisfied that the lawyer are doing a good job protecting the Class. The representatives have shifted the expenses of litigation to the attorneys; as such, they are able to finance the litigation.

**Class Counsel**

Lead counsel for Plaintiffs, Bobby Pryor, has the qualifications and experience to handle this matter. He has a distinguished law school record. Since law school, he has had extensive trial experience, and has handled class action and complex litigation. Further, the trial team working on this matter has dozens of years of litigation experience. The Court is satisfied based on the Record that Class Counsel has the ability to handle the expenses associated with handling this matter to conclusion. The Court is familiar with Class Counsels' handling of this matter to date and find counsel to be diligent and competent.

**PREDOMINANCE**

The Court concludes that each subclass satisfies the predominance requirement.

1. **Substantive Issues that will control the outcome of the case are common among all Class Members and predominate over any individual issues.**

These substantive and common issues that will control the outcome of the case include:

**For the Agency Profitability Bonus (Subclass I), the Underwriting Contract Value Bonus (Subclass II), and the Auto Retention Bonus (Subclass III):**

- (a) whether Farmers Group, Inc. and/or the Farmers Exchanges improperly used a state break-even ratio to calculate the agent's underwriting dollar gain;
- (b) whether Farmers Group, Inc. and/or the Farmers Exchanges improperly used reserves set for IBNR as a percentage of the agent's premiums to determine the agent's underwriting dollar gain;

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(c) whether Farmers Group, Inc. and/or the Farmers Exchanges failed to account for interest income on IBNR reserves in the agent's underwriting dollar gain calculation yet debited the agent with the full amount of the IBNR;

(d) whether Farmers Group, Inc. and/or the Farmers Exchanges breached the Achievement Awards booklets by failing to credit the agent's underwriting dollar gain calculation with amounts deducted for IBNR when the actual claims are reported and specific reserves are set or if the claims are never reported;

(e) whether Farmers Group, Inc. and/or the Farmers Exchanges breached the Achievement Awards booklets by using the same amounts designated as IBNR as two separate losses in the agent's underwriting dollar gain calculation, once in calculating the agent's loss ratio and again as part of the state break-even ratio;

(f) whether Farmers Group, Inc. and/or the Farmers Exchanges improperly charged the agent's underwriting dollar gain with unallocated loss adjustment expenses;

(g) whether Farmers Group, Inc. and/or the Farmers Exchanges improperly charged the agent's underwriting dollar gain twice for the same loss adjustment expense, once in calculating the agent's loss ratio and again as part of the state break-even ratio;

(h) whether Farmers Group, Inc. and/or the Farmers Exchanges improperly charged a management fee that Farmers Group, Inc. pays to itself as a loss in the underwriting expense percentage portion of the state break-even ratio calculation;

(i) whether Farmers Group, Inc. and/or the Farmers Exchanges improperly charged the agent's commissions against the agent's underwriting dollar gain calculation; and

(j) whether Farmers Group, Inc. and/or the Farmers Exchanges failed to account for interest income on reserves when calculating the agent's underwriting gain, yet debited the agent with the full amount of the reserve as loss.

**In, addition to (a) through (j) above, for the Auto Retention Bonus (Subclass III):**

whether Farmers Group, Inc. and/or the Farmers Exchanges improperly excluded premium from the "Total Farmers Auto Premium" from which the 1999 auto Retention Bonus was calculated.

**For the Life Performance Bonus (Subclass IV):**

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(a) whether Farmers Group, Inc. and/or the Farmers Exchanges failed to include renewal policies and commissions in the Life Performance Bonus calculation; and

(b) whether Farmers Group, Inc. and/or the Farmers Exchanges failed to determine the agent's qualifications for the Life Performance Bonus annually instead of quarterly.

These substantive issues, which will control the outcome of the case, are common to the Class Members and have been and will continue to be the object and focus of most of the efforts and time of the Court and the litigants. Once these core liability and damage formula issues that are common to the class are determined as to Leonard and Sawyer, the entire controversy between the Class Members and Farmers Group, Inc. and/or the Farmers Exchanges will be decisively resolved.

Should Plaintiffs prevail on one or more substantive issues, the only issue individual to Class Members would be the result of the mathematical calculation of damages using a formula common to the Class. Upon the determination of the correct formula that complies with the contracts, a mathematical calculation based upon the common formula will be utilized to determine individual damages.

**2. Applicable substantive law is common to all class members.**

California substantive law should be applied to all of the breach-of-contract claims regarding the bonuses because the State of California has the most significant relationship to both the bonus documents and the parties.

Farmers Group, Inc. devised the bonuses in California, formulated and wrote the bonus documents in California, published the bonus documents in the Achievement Awards booklets in California, and sent out the bonus documents from California. Moreover, since Farmers Group, Inc. applied the bonuses the same to all agents in the 29 states, it is logical that Farmers Group,

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Inc. expected one state's laws to apply to the interpretation of the bonus documents. Therefore, the court concludes that California substantive law should apply.

3. **The Court anticipates that the manner in which this case will be tried is manageable.**

The Court is prepared to try this case as a single breach of contract case in one bench trial if the parties all take the position that the contract terms in dispute are unambiguous. Issues such as whether any or all of the bonus documents constitute one or more contracts, the identity of the parties to any such contracts, the terms of the offers, the meaning of the terms, words, and phrases contained within any such contracts, and the interpretation of any such contracts are questions of law which the Court anticipates can be determined at summary judgment or bench trial.

The substantive matters at issue in Leonard and Sawyer's breach of contract case are identical to those at issue between the Class Members, Farmers Group, Inc., and the Farmers Exchanges. The bonus documents are identical. Farmers Group, Inc. applied the bonus documents identically to all agents in the 29 states. Farmers Group, Inc. and/or the Farmers Exchanges' alleged breach would be identical for all agents. The resolution of the contract claims of Plaintiff Leonard and Sawyer resolve all questions of Farmers Group, Inc. and/or the Farmers Exchanges' liability to individual Class Members. Likewise, the calculation of damages, if any, for Leonard and Sawyer would establish the formula by which all agents' contractual damages would be established.

In the event fact issues of contract interpretation develop, the Court anticipates presenting a single jury with specific questions concerning the disputed terms and, once receiving the jury's findings, utilizing those findings to determine as a matter of law the correct contract interpretation and, depending upon the findings, establishing a damage formula applicable to all Class Members. The Court has already appointed a Special Master in this case for the handling of

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discovery disputes, and he is now familiar with the relevant issues and disputes between the parties. It is anticipated that a Special Master could be utilized to oversee the parties, or an outside accounting firm, in calculating, if necessary, the individual Class Member's damages. Defendants have admitted that their computer system can recalculate the bonuses for all agents for all years since 1995, if it is determined necessary, by using an adjusted contractual formula. Alternatively, Defendants can produce the raw data and Plaintiffs will perform the proper damage calculation.


Therefore, the court finds that this case can be appropriately managed as a class action.

**SUPERIORITY**

No other lawsuits have yet been filed regarding the bonuses at issue, so the efficiency of trying this matter as a class action has not been diluted. Moreover, because most of the Class Members are still agents of the Farmers Exchanges, the Class Members may fear potential retaliation by Farmers Group, Inc. and/or the Farmers Exchanges at the filing of individual lawsuits. Furthermore, individual adjudication of identical fact patterns poses the risk of inconsistent results. Therefore, the court concludes that in this case, a class action is a superior method of adjudicating the controversy. It should be noted, however, that because this is a contract action, an opt-out class is appropriate.

**IT IS SO ORDERED.**

SIGNED THIS 2nd DAY OF November, 2001.

  
Honorable W. Jeanne Meurer