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 FILED 06 SEP 14 AM 11:23 TRAVIS COUNTY, TEXAS 98th JUDICIAL DISTRICT

FINAL JUDGMENT

On September 14, 2006, the Court held an evidentiary hearing in this Action (the "Settlement Hearing"). After considering the Settlement Agreement ("Settlement Agreement"), the releases contained therein and the exhibits thereto, pleadings and record in this case, the evidence presented at the hearing, and arguments of counsel and applicable authorities, and finding that there are no objections by Class Members to the Settlement Agreement, the Court **FINDS and RULES** as follows:

1. The Court has jurisdiction over the subject matter of this Action and over the parties to the Action, including the Settlement Class Members, as Plaintiffs, and 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., as Defendants (collectively referred to as "Defendants").

2. On November 2, 2001, the Court certified this action to proceed as a class action pursuant to Texas Rule of Civil Procedure 42.

3. On July 6, 2006, after reviewing the Settlement Agreement and all additional information requested by the Court regarding the Settlement Agreement, the Court preliminarily approved the Settlement, finding (1) that the Settlement was within the range of possible approval; (2) that the Notice of the Proposed Settlement to Class Members of the Settlement terms and conditions (including a new opportunity to request exclusion for individual Class Members, who had an earlier opportunity to request exclusion but did not and notice of any Class Members' right to object to the proposed Settlement) was appropriate; and (3) that the scheduling of a final fairness hearing was appropriate.

4. The Notice provided, pursuant to the Court's Amended Order on Notice of Proposed Settlement to Class Members signed July 6, 2006, the best notice practicable to all Class Members under the circumstances, and fully complies with Tex. R. Civ. P. 42(e).

5. After conducting the Settlement Hearing, the Court finds that the Settlement Agreement is reasonable, fair, just, and adequate and satisfies Texas Rule of Civil Procedure 42 and is hereby approved.

6. In evaluating the proposed settlement the Court has considered the potential existence of fraud or collusion behind the settlement; the complexity, expense, and likely duration of the litigation: the stage of the proceedings and the amount of discovery completed; the probability of the Plaintiffs' recovery on the merits; the range of possible recovery; and, the opinions of the Class Counsel, class representatives and absent class members. In considering such factors the Court finds that the proposed settlement is fair, reasonable and adequate to the Class Members.

7. There is no evidence or suggestion of fraud or collusion. This case has been vigorously fought by the parties. The Court finds that the negotiations were at arms length and not the result of fraud or collusion.

8. This case has proceeded for more than six years. It includes unique and complex issues concerning the applicability of accounting practices and principles, as well as contract, choice of law and evidentiary issues. The Court would further anticipate years of future litigation, both at the trial court and appellate levels, absent the proposed settlement. The Court finds that the complexity, expense and duration of the litigation, weighs in favor of the proposed settlement.

9. The Court further finds that there has been extensive discovery and numerous orders of the Court which have both enlightened the parties in regard to the factual strengths and

weaknesses of their respective positions and which have further served to position the case such that the proposed settlement is both fair and reasonable to the Class Members.

10. The Court has also evaluated the proposed settlement in light of the probability of the Plaintiffs' success on the merits. In particular, the Court recognizes its own orders granting Defendants' Motions for Summary Judgment which are part of the Court's file. In consideration of its prior rulings, the Court finds that the probability of the Plaintiffs' success on the merits, supports the Court's finding that the proposed settlement is fair and reasonable to the Class Members.

11. The Court has further considered the range of possible recovery to the Class Members. In doing so, the Court again recognizes its prior Summary Judgment rulings and finds that this factor further supports its finding that the proposed settlement is fair and reasonable.

12. The Court has received testimony from both Class Counsel and Michael Sawyer, class representative, that the settlement is both fair and reasonable. The Court takes judicial notice of its own file and the affidavit of Rachel J. Braun of Poorman-Douglas Corporation, the Settlement Administrator, and finds that there have been no intervenors and no objectors to the proposed settlement. The Court, therefore, finds that this factor further supports its finding that the proposed settlement is fair and reasonable.

13. The Court has received testimony, taken judicial notice of its file, considered the advice and recommendations of counsel for the parties and reviewed relevant case law in evaluating and determining compensation of Class Counsel.

14. The method of awarding attorneys' fees and the amount of attorneys' fees is within the discretion of the trial court. *General Motors Corp. v. Bloyed,* 916 S.W. 2d 949, 960; *Johnson v. Blockbuster,* 113 S.W.3d 366 (Tex. App.—Beaumont 2003, pet. stricken). In *Bloyed,* the Texas Supreme Court affirmed the latitude of the district courts to employ either the Lodestar or Percentage method of calculating attorneys' fees.

(a) In determining and evaluating the reasonableness of attorneys' fees under each method, the Court has considered:

1) the time and labor required;
2) the novelty and the difficulty of the questions involved;
3) the skill required to perform the legal service properly;
4) the preclusion of other employment by Class Counsel due to the acceptance of the case;
5) the customary fee;
6) whether the fee is fixed or contingent;
7) the time limitations imposed by the client or the circumstances;
8) the amount involved and the results obtained;
9) the experience, reputation and ability of attorneys';
10) the "undesirability" of the case;
11) the nature and length of the professional relationship with the client; and,
12) awards in similar cases. (collectively, the "*Johnson* factors" *Johnson v. Georgia Highway Express, Inc.* 488 F. 2d 714, 717-19 (5th Cir. 1974)).

(b) The Percentage Method.

1. In evaluating and determining Class Counsel's fees under the Percentage method, the Court has reviewed both state and federal case law. In *Shaw v. Toshiba America Information Systems, Inc.,* 91 F. Supp. 2d 942 (E.D. Tex. 2000), the court stated that the National Economic Research Associated study, the most complete analysis of fee awards in class action cases conducted as of January 2000, found that regardless of size, attorneys' fees average approximately 32% of the recovery and cited to authority that the Eleventh Circuit uses a benchmark of 30% to be adjusted up or down by use of the *Johnson* factors. *Id.*, at 988-989. Other courts have held that a benchmark of 25% is reasonable and that benchmark percentages

of 20-30% have been used. *See Batchelder v. Kerr-McGee Corp.*, 246 F. Supp. 2d 525 (W.D. Miss 2003); *In re SmithKline Beecham Corp. Sec. Lit.*, 751 F. Supp. 525, 533 (1990)(citing other class actions and various treatises that state the benchmark range is between 20 - 35%); *Johnson v. Graulty*, 886 F.2d 268, at 272 (9th Cir. 1989)(applied a benchmark of 25% that was to be adjusted using the *Johnson* factors). The Court finds that 25% is fair and reasonable.

2. The uncontroverted testimony is that the estimated value of the vested retrospective relief of the settlement is $8,420,900.00 and present day value of the ascertainable prospective relief is $8,000,000.00, for a total estimated settlement recovery of $16,420,900.00, plus up to $4,700,000.00 in attorneys' fees and expenses. Such amounts do not include the value to Subclass IV afforded by the additional life issued and paid credits which will further add to the total value of the settlement and would consequently reduce the percentage of the amount of attorneys' fees and expenses requested. As a percentage of the estimated recovery, the attorneys' fees and expenses awarded herein equal less than 25% of the estimated settlement value, which the Court finds to be reasonable and fair to the Class Members and which amount is in accord with established federal benchmarks. Further, the Court finds that such attorneys' fees and expenses are reasonable in light of the *Johnson* factors.

(c) Lodestar Method

(1) Lodestar factors

(i) Time and labor involved

Class Counsel has litigated this case for more than six years. There have been thousands of interrogatories, requests for admission, and requests for production exchanged between the parties. There have been numerous fact witnesses and expert witnesses that have been prepared for deposition and deposed, requiring travel to California, Maine, and Washington. There have

been numerous Motions for Summary Judgment and Motions for Reconsideration of Rulings on Motions for Summary Judgment. Class Counsel has spent years defending this Court's Class Certification Order through the appellate process and responding to Defendants' appeal regarding the first class action notice. The uncontroverted evidence presented by Class Counsel is that their time, expended by five attorneys from two law firms, well exceeds fifteen thousand hours over the pendency of the litigation.

(ii) The novelty and the difficulty of the questions involved

The Court finds that this has been an extraordinarily complicated case involving complex factual and legal issues, including choice of law, California's Parole Evidence Rule, insurance law, contract law and accounting procedures. All such issues have required thorough research and briefing by Class Counsel. The Court takes judicial notice of its extensive file, including the voluminous summary judgment papers and the extensive work of Class Counsel in briefing and arguing such issues. Further, the Court takes judicial notice of the appellate briefing that has been provided to and reviewed by the Court.

(iii) The skill required to perform the legal service properly

The Court finds that Class Counsel's briefing to this Court, the Court of Appeals, and the Texas Supreme Court on complex issues has been detailed, thorough and well researched. The Court's review of its own file demonstrates that Class Counsel was prepared, knowledgeable about the case and the law, and diligent in their pursuit of justice for their clients.

(iv) The preclusion of other employment

The Court finds that for the first two years and the last year of this case, Class Counsel at Pryor & Bruce and Robert Kalinke of Hunter, Kalinke & Boyd devoted substantially all of their time to this case, substantially precluding them from accepting other cases or other legal work.

This has worked an exceptional hardship upon Class Counsel, particularly Pryor & Bruce, who went more than three years without being able to accept other substantial employment.

(v) The customary fee

The Court finds, based upon testimony by Class Counsel and upon taking judicial notice of the usual and customary rates of similarly experienced and talented attorneys who practice before the Court, that all of the attorneys who worked on this case are experienced litigators whose hourly rates are reasonable, $300.00 per hour. The Court finds that such an hourly rate is a reasonable rate for attorneys with the experience and expertise of Class Counsel.

(vi) Whether the fee is fixed or contingent

The Court recognizes the risk in Class Counsel's acceptance of this case on a contingency fee basis.

(vii) The time limitations

The Court recognizes the parties have spent almost six-years in litigation and the case was settled on the eve of trial after extensive trial preparation.

(viii) The amount involved and the result obtained

The Court finds that, after over six years of litigation Class Counsel's effort affords the Class Members substantial recoveries. This result was obtained as a result of Class Counsel's diligence, skill and hard work.

(ix) The experience, reputation, and ability of attorneys

The Court finds that the attorneys who have represented the Class and Subclasses are experienced, qualified and skillful attorneys of good repute, each having more than fifteen years of experience, with lead counsel having more than twenty-three years of experience.

(x) The "undesirability" of the case

This case had an element of undesirability for Class Counsel in that at the time the case was filed Pryor & Bruce was predominantly a defense firm. Class Counsel has testified that by filing this suit Pryor & Bruce believed that they foreclosed any realistic opportunity of representing Farmers in the future and risked upsetting other potential insurance company and defense clients.

(xi) The nature and length of the professional relationship with the Client

The Court finds that this is not a factor in this case.

(xii) Awards in similar cases

The Court finds that a general benchmark of 25% of the settlement recovery is reasonable. Class Counsel's fees which amount to less than 25% of the estimated value of the settlement are less than this benchmark. The Court finds that attorneys' fees and expenses in the amount awarded herein are both reasonable and fair to the Class Members.

(2) Lodestar Calculation

Class Counsel has requested attorneys' fees and expenses of $4.7 million, of which the Court finds that $200,000.00 represents recovery for expenses. Thus, requested fees are $4.5 million for in excess of 15,000 hours expended by attorneys who worked on the case, less than an hourly rate of $300.00 which the Court determines to be reasonable. The Court finds that this rate is reasonable for attorneys with Class Counsel's experience and qualifications and is awarded without the necessity of any increase through the use of a Lodestar multiplier. However, in the event a Lodestar factor would have been considered necessary, the Court finds that it would have been appropriate and reasonable to adjust the attorneys' fees upward. The

Court finds that the fees and expenses awarded herein to Class Counsel are reasonable and fair to the Class Members.

Based on the foregoing, **the Court ORDERS and DECREES** as follows:

1. The Settlement Agreement, including the definitions contained therein and the exhibits thereto, is approved and shall be effectuated, enforced, and carried out in accordance with the terms and provisions thereof, and the Court orders the Parties to comply with the Settlement Agreement. The terms "Released Parties," "Released Claims," "Settlement Class," "Settlement Class Members," "Releasors" and all other terms in this Final Judgment are defined in accord with the terms in the Settlement Agreement.

2. This Final Judgment is binding on all parties to the Settlement Agreement, and on all Settlement Class Members. Settlement Class Members, as defined in the Settlement Agreement, include all of the following who did not timely request exclusion from the Settlement Class:

All past and current Agents of the Farmers Exchanges[1] in the 29 states[2] who have executed an agent appointment agreement with one or more of the Defendants and who belong to one or more of the following Subclasses (also referred to as "Agents"):

> 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

[1] 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").

[2] 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.

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 though 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 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 through 1999, were Agents as of December 31 for any one of those years, and (b) met the life lapse ratio qualifications set forth in corresponding yearly Agents Achievements Awards booklets from 1996 through 1999 (except career agents because they are exempt from the life lapse ratio qualifications).[3]

3. The Court awards reasonable and necessary attorneys' fees and expenses to Class Counsel in the amount of $ 4,700,000.00 (4 million seven hundred thousand and no/100) , this award to be paid to Class Counsel within 15 business days after the Effective Date, in accordance with the Settlement Agreement, via wire transfer to the account of Pryor & Bruce at [redacted], 102 West Moore Avenue, Terrell, Texas 75160-0040, phone 972 524 3411; Bank Account Number [redacted]; Bank Routing Number [redacted]; Bank Account Holder Pryor & Bruce, 302 N. San Jacinto, Rockwall, Texas 75087 and referencing "Leonard Settlement". The Court approves of Michael Leonard and Michael Sawyer receiving compensation for their roles as class representatives, and accordingly each shall receive Twenty-Five Thousand Dollars ($25,000) from Class Counsel out of the award of attorneys' fees and expenses awarded herein.

[3] Excluded from the Class Definition are Defendants and Defendants' affiliated companies.

4. The Parties are hereby ordered to effectuate the terms of the Settlement Agreement.

5. Entry of this Final Judgment approves the Settlement Agreement and settles all Released Claims. As of the Effective Date of the Settlement Agreement, the Plaintiffs and Settlement Class Members shall be forever barred from bringing or prosecuting any action or proceeding that involves or asserts any of the Released Claims, as defined in the Settlement Agreement, against the Released Parties, and shall be deemed to have released and forever discharged the Released Parties from all Released Claims.

6. As of the Effective Date of the Settlement Agreement, the Plaintiffs and Settlement Class Members ("Releasors") shall be conclusively deemed to have acknowledged the release of any and all actions, suits, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages (including actual, consequential, statutory, and/or punitive or exemplary damages), injuries, attorneys' fees, pre-and post-judgment interest, costs, expenses, debts, liabilities, judgments, or remedies recoverable now or at any later time under applicable law, through the Effective Date of this Agreement, whether known or unknown, pending or threatened, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, which have been or could have been asserted, in any way arising out of or relating to the Life Performance Bonus, the Agency Profitability Bonus, the Underwriting Contract Value Bonus, the Auto Retention Bonus, or the allegations made by Class Plaintiffs in the Action and/or certified by the Trial Court. This definition further includes, but is not limited to, all claims, demands, and causes of action, that Plaintiffs may have now or in the future by virtue of assignment or otherwise, arising out of the manner in which Defendants and Defendants' counsel handled, settled, or defended any claims, demands, or causes of action asserted by Plaintiffs.

Each Releasor also expressly and irrevocably waives and releases, any and all defenses, rights, and benefits that each Releasor has or may have or that may be derived from provisions of applicable law which, absent such waiver, may limit the extent or effect of the release set forth in this Settlement Agreement. Without limiting the generality of the foregoing, each Releasor expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor might have in relation to the release under or by virtue of the provisions of Section 1542 of the Civil Code of the State of California, which reads:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor has or may have under similar statutes in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the Release.

The term "Released Claims" also includes all claims that were raised or that could have been raised in this Action, including, but not limited to, the allegations contained in Plaintiffs' pleadings, motions, disclosures, interrogatory responses, and/or other documents filed in the Action, including without limitation, the following: claims/issues concerning or related to failing to properly determine if an Agent qualified for an Award; failing to pay an Award or grant an Award, or where an Award was paid, failing to properly calculate the amount of the Award in the Agency Profitability Bonus, the Contract Value Bonus, and the Auto Retention Bonus; failing to calculate and/or pay the Life Performance Bonus, such as any claim for failing to account properly for "renewal" policies, failing to include policies in force (as opposed to issued and paid policies) and/or second or subsequent year's commissions, and failing to properly determine compliance and calculate annually (as opposed to quarterly) for the Life Performance

Bonus; using a state break-even ratio to calculate the Agent's underwriting dollar gain or, in the alternative, miscalculating the state break-even ratio; improperly using losses incurred but not reported ("IBNR") as a factor in calculating the Agent's underwriting dollar gain; improperly using IBNR as a percentage of the Agent's premium to determine the Agent's underwriting dollar gain; failing to account for Defendants' interest income on the monies attributable to IBNR, yet debiting the Agent with the full amount of the IBNR; failing to credit the Agent's 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; improperly using the same amounts designated as IBNR as two separate losses in the Agent's underwriting dollar gain calculation, such as by using IBNR once in calculating the Agent's loss ratio and again as a part of the state break-even ratio or by improperly counting IBNR twice in the Agent's loss ratio calculation; improperly using loss adjustment expenses ("LAE") in calculating the Agent's underwriting dollar gain; improperly charging Agent's underwriting dollar gain with unallocated loss adjustment expense; improperly charging Agent's underwriting gain twice for losses designated as the same LAE, such as by using LAE once in calculating the Agent's loss ratio and again as a part of the state break-even ratio or by improperly counting LAE twice in the Agent's loss ratio calculation; improperly debiting the Agent's underwriting dollar gain with a loss for monies Farmers Group, Inc., Truck Underwriters Association, or Fire Underwriters Association received as a management fee; improperly charging/debiting Agents underwriting dollar gain twice for said management fee; improperly charging the Agents' commissions against the Agent's underwriting dollar gain; improperly using reserves to calculate the Agent's underwriting dollar gain by failing to account for Defendants' investment income on the monies attributable to reserves yet debiting the Agent with the full amount of the reserves; improperly

excluding premium from the Total Farmers Auto Premium from which the Auto Retention Bonus was calculated.

7. The Effective Date of the Settlement shall be that date on which the time for appeal or to seek permission to appeal from the Court's approval of the Agreement and entry of this Final Judgment expires or, if appealed, approval of this Agreement and this Final Judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

8. The Released Parties shall not be required to nor be under any obligation to provide any Relief set forth in the Settlement Agreement until after the Effective Date.

9. If the Effective Date is on or after January 1, 2007, the Prospective Relief set out in paragraph 35 (a) and (b) of the Settlement Agreement shall commence on January 1 of the calendar year following the Effective Date and be available for that calendar year and the subsequent calendar year under the terms and conditions of paragraph 37 (b) of the Settlement Agreement.

10. If the Effective Date is on or after January 1, 2007, the Prospective Relief set out in paragraph 35 (c) of the Settlement Agreement shall commence on January 1, of the calendar year following the Effective Date and be available for that calendar year under the terms and conditions of paragraph 37 (c) of the Settlement Agreement.

11. The Retrospective and Prospective Relief and payment of attorneys' fees and expenses as provided and capped in the Settlement Agreement are the only consideration, fees, and expenses the Defendants shall be obligated to give the Plaintiffs, Settlement Class Members and Class Counsel in connection with the Settlement Agreement.

12. All Released Claims, as defined in the approved Settlement Agreement, are dismissed in their entirety, with prejudice.

The Court further ORDERS as follows:

1. The Court reserves and retains exclusive and continuing jurisdiction over this Action, the Plaintiffs, the Settlement Class Members, and the Released Parties, to the fullest extent allowed by Texas law, for the purposes of supervising the enforcement, construction, and interpretation of:

(a) the Settlement Agreement, and

(b) this Final Judgment.

2. This Final Judgment and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by any Party of any liability or wrongdoing whatsoever;

3. Costs of Court are to be borne by the Party/Parties incurring same.

4. This Final Judgment incorporates all other orders and resolves all claims in this case made by all parties. All other relief not expressly granted herein is hereby DENIED.

SIGNED this 14 day of September, 2006.

JUDGE PRESIDING