

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

FILED
IN THE DISTRICT COURT
FEB 17 2005
POTTAWATOMIE COUNTY, OK
BY RETA HEAD, COURT CLERK
DEPUTY

HELEN SIKES, individually and as class
representative on behalf of all others
similarly situated,

Plaintiffs,

v.

Case No. CJ-03-1149

FARMERS GROUP, INC.; FARMERS
INSURANCE COMPANY, INC.; and
FARMERS INSURANCE EXCHANGE,

Defendants.

THIRD AMENDED PETITION

COME NOW the Plaintiffs, Helen Sikes and Wayne Miller (hereinafter referred to as "Plaintiffs"), individually and as class representatives on behalf of all others similarly situated, and for their causes of action against the Defendants, Farmers Group, Inc., Farmers Insurance Company, Inc., and Farmers Insurance Exchange (hereinafter referred to collectively as "Farmers") states as follows:

I. Nature of the Action

1. Plaintiffs bring this suit on behalf of themselves and all others similarly situated ("Class" or "Class Members") to remedy Farmers' practice of utilizing a computer software system known as "Colossus" to adjust bodily injury damages for first party uninsured and underinsured motorist ("UM/UIM") claims and making payment to insured persons based upon the Colossus assessment.

2. The UM/UIM coverage in all Farmers' policies uniformly requires Farmers to pay all sums which an insured person is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle because of bodily injury sustained by the

insured person.

3. As more fully set forth herein, through of the use of the Colossus software program, Farmers systematically and uniformly pays insured persons less for their bodily injury claims than they would be legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle.

4. As a result of Farmers' deceptive actions through the use of Colossus, Plaintiffs and the Class were damaged because they received payments from Farmers that were less than they were legally entitled to recover as damages from the owners or operators of an uninsured or underinsured motor vehicle.

II. The Parties

5. Plaintiff Helen Sikes ("Sikes") is a citizen of the State of Oklahoma and a resident of Pottawatomie County, Oklahoma. At all times relevant herein, Sikes was an insured person under an automobile policy issued by Farmers which provided UM/UIM coverage.

6. On or about October 27, 2001, Sikes was riding as a passenger in a vehicle that was involved in an accident with an underinsured driver in Pottawatomie County, Oklahoma. As a result of the accident, Sikes sustained injuries and incurred medical expenses for which she sought payment from Farmers as an insured person pursuant to Farmers' UM/UIM coverage.

7. Plaintiff Wayne Miller ("Miller") is a citizen of the State of Oklahoma and a resident of Oklahoma County, Oklahoma. At all time relevant herein, Miller was an insured person under an automobile policy issued by Farmers which provided UM/UIM coverage.

8. On or about August 29, 2003, Miller was a passenger in a vehicle that was involved in an accident with an underinsured driver in Colorado. As a result of the accident, Miller sustained injuries and incurred medical expenses for which he sought payment from

Farmers as an insured person pursuant to Farmers' UM/UIM coverage.

9. Defendant Farmers Insurance Exchange is an unincorporated association made up of policyowners who are citizens of different states and has organized a number of wholly owned subsidiary companies to issue policies in Oklahoma and various other states. All policies issued are fully reinsured with, or pooled into, Farmers Insurance Exchange. Farmers Insurance Exchange consists of policyholders who, for their mutual protection, exchange insurance contracts through the medium of an attorney-in-fact. Farmers Insurance Exchange provides claims adjusting and related services to all Farmers Insurance Group-affiliated companies.

10. Defendant, Farmers Group, Inc., d/b/a Farmers Underwriters Association, is a Nevada corporation that is the attorney-in-fact for Defendant Farmers Insurance Exchange. Farmers Group, Inc. is empowered in each underwriter's agreement not only to exchange insurance contracts for the subscribers, but also to select risks, prepare and mail policy forms and invoices and provide other policy services, collect premiums, provide computer services, and perform other administrative and managerial functions. In return for the management service it provides to Farmers Insurance Exchange as its attorney-in-fact, Farmers Group, Inc. receives a percentage of premiums paid by the Farmers Insurance Exchange's policyholders. To the extent it operates as the managing agent and attorney-in-fact, either directly or through its wholly owned subsidiaries, Farmers Group, Inc., is deemed, as a matter of law, to be a party to the contracts of insurance and subject to all of the duties and obligations alleged herein.

11. Defendant, Farmers Insurance Company, Inc., is incorporated under the laws of Kansas and has its principal place of business in Los Angeles, California.

12. While Plaintiffs' automobile policies were issued by Farmers Insurance Company, Inc., Farmers Group, Inc. is responsible for the management of this company. Upon

information and belief, Farmers Group, Inc., by and through its agents and employees, played a role in the handling of Plaintiffs' UM/UIM claims.

13. All of the Defendants referred to in this action were, at all relevant times, and are, entities engaged in the business of insurance and were instrumental in providing the insurance coverage to Plaintiffs and the Class as referred to herein, and controlling all of the decisions relating to claims handling, under said automobile policies.

14. Farmers Insurance Exchange and two other affiliated reciprocals, together with Farmers Group, Inc. and their subsidiaries, are referred to collectively by Farmers as the "Farmers Insurance Group of Companies." Policyholders are also issued identification cards identifying them as "a policyholder of a member of the Farmers Insurance Group of Companies." The Farmers Insurance Group of Companies are all under the same general management, located in Los Angeles, California.

15. Farmers is the third largest insurer of automobiles and homes in the United States with more than 14 million customers. Farmers does business in 47 states, including the District of Columbia, from the west coast to the mid-west and southeast through a network of more than 14,000 full-time career agents.

16. Farmers utilizes a standardized form of automobile insurance policy which it prepares and issues to its nationwide sales force.

17. At all times mentioned in the causes of action alleged herein, each and every Defendant was an agent and/or employee of each and every other Defendant. In doing the things alleged in the causes of action stated herein, each and every Defendant was acting within the course and scope of this agency or employment and was acting with the consent, permission and authorization of each of the remaining Defendants. All actions of each Defendant, as alleged in

the causes of action stated herein, were ratified and approved by every other Defendant or its officers or managing agents.

III. Jurisdiction and Venue

18. Plaintiffs hereby adopt and re-allege each fact set forth in paragraphs 1-19 above as if fully set forth herein.

19. This Court has jurisdiction over this civil action seeking compensatory damages, punitive damages, injunctive and restitutionary relief, and attorneys' fees pursuant to Oklahoma common law.

20. This Court has jurisdiction over Farmers Group, Inc., d/b/a Farmers Underwriters Association, because it has sufficient contacts with Oklahoma by virtue of its activities in Oklahoma as attorney-in-fact for Farmers Insurance Exchange including selecting risks, preparing and mailing policy forms and invoices and providing other policy services, collecting premiums, providing computer services, providing other administrative and managerial functions to Oklahoma policyholders, having marketed the policies sold to Oklahoma residents and having derived substantial revenue from the sale of policies to Oklahoma residents to render jurisdiction by Oklahoma courts permissible. Further, Farmers Group, Inc. is a co-participant with Farmers Insurance Exchange in committing the acts and omissions alleged herein.

21. This Court has jurisdiction over Farmers Insurance Exchange because it is an unincorporated association made up of policyholders including those who are citizens of Oklahoma and is authorized to conduct business in Oklahoma and has intentionally availed itself to the laws and markets of Oklahoma in the sale and exchange of insurance contracts.

22. This Court has jurisdiction over Farmers Insurance Company, Inc. because it is authorized to conduct business in Oklahoma and has intentionally availed itself to the laws and

markets of Oklahoma in the sale and exchange of insurance contracts.

23. Venue is proper in this county because Farmers does substantial business in this county and Plaintiff Sikes resides in this county.

IV. Conduct Giving Rise to Claims

24. Plaintiffs hereby adopt and re-allege each fact set forth in paragraphs 1-23 above as if fully set forth herein.

25. Plaintiffs were injured in accidents that were the fault of an uninsured or underinsured driver. As a result of the accidents, Plaintiffs incurred medical expenses for their treatment as well as general damages, including but not limited to pain and suffering.

26. At the time of the accidents, Plaintiffs were insured persons under a policy of insurance with Farmers that included UM/UIM coverage. All required premiums were paid on the policies and timely notification was provided to Farmers on Plaintiffs' respective claims. Plaintiffs met all conditions precedent for an insured person to receive payment for damages under the UM/UIM coverage of the Farmers' policy.

27. Farmers determined the amount it would pay to each Plaintiff for his/her bodily injury damages by use of the Colossus software program, which undervalued and underpaid Plaintiffs on their claims.

28. Upon information and belief, Plaintiffs allege that Colossus is a software program that was developed by Computer Sciences Corporation and sold or licensed to Farmers. Colossus is marketed as a knowledge-based system for assessing general damages for bodily injury claims. In the year 2000, Farmers began using Colossus to evaluate the damages it owed in both first party and third party bodily injury claims.

29. Upon information and belief, Plaintiffs allege that Farmers purchased Colossus as

a “cost containment” tool that would enhance Farmers’ profits at the expense of first party insured persons. When Farmers purchased Colossus, they knew that they would be able to “tune” the software program to achieve their goal of decreasing payments to insured persons. Farmers achieved its goal by unilaterally and arbitrarily reducing by a stated percentage the amount it would pay for all uninsured and underinsured bodily injury claims. The set percentage applied to all uninsured and underinsured claims even though the claims had not yet occurred at the time Colossus was tuned. This tuning resulted in the Colossus software undervaluing the amount that Plaintiffs and the Class were legally entitled to recover from the uninsured or underinsured driver.

30. Farmers agreed with Computer Sciences Corporation to keep as secret the exact manner in which Colossus generates its evaluations; thus, even if an insured person knew that Colossus was used to evaluate their claim, they could never verify the accuracy or the fairness of the evaluation. The adjusters were likewise unable to verify the accuracy of the Colossus calculation and, more over, could not explain its methodology to the insured persons even if the existence of Colossus was disclosed.

V. Class Allegations

31. Plaintiffs hereby adopt and re-allege each fact set forth in paragraphs 1-30 above as if fully set forth herein.

32. Plaintiffs seek certification of a Class pursuant to 12 O.S. §2023 that is defined as follows:

All persons in the United States, who, during the period of October, 1999 through the present were insured persons under an automobile insurance policy issued by Farmers and made a claim for bodily injury damages pursuant to the uninsured or underinsured coverage of the policy where Farmers utilized Colossus to assess the amount Farmers would pay under the policy. Excluded from the Class are

employees of Farmers, its officers, its directors and those of its subsidiaries or its affiliates.

33. This action is properly brought as a class action for the following reasons:

(a) As the third largest insurer in the United States with over 14 million customers, the Class is so numerous and geographically dispersed that joinder of all Class Members is impracticable. While Plaintiffs do not know the exact number and identity of Class Members, Plaintiffs believe that there are thousands of Class Members, and that their identities can be ascertained from Farmers' books and records. Attempting to join and name each Class Member as Co-Plaintiffs would be unreasonable and impracticable.

(b) There are questions of law and fact, common to the Class, which common questions predominate over any individual questions effecting only individual Class Members. These questions, which arise from common policy language in Farmers' standard automobile insurance policies and from Farmers' common practices and procedures in adjusting claims through the use of Colossus, predominate over any questions effecting only individual Class Members. Among these common questions of law and fact are:

(i) Whether Farmers' use of Colossus as alleged herein, constitutes a material breach of its contracts with Plaintiffs and members of the Class by depriving Plaintiffs and the Class of their contractual rights to the insurance coverage benefits to which they are entitled under the plain language of Farmers' insurance policies;

(ii) Whether Farmers' adjusting practices through the use of Colossus, as alleged herein, breach the implied covenant of good faith and fair dealing with

Plaintiffs and the members of the Class by depriving Plaintiffs and the Class of their rights to the insurance coverage benefits to which they are entitled under the plain language of Farmers' insurance policies;

(iii) Whether Farmers devised and deployed a scheme or artifice to underpay uninsured and underinsured claims by and through the use of Colossus;

(iv) Whether Farmers engaged in a common course of adjusting practice through the use of Colossus which acted to defraud or deceive Plaintiffs and members of the Class as to the value of their uninsured or underinsured bodily injury claim;

(v) Whether Plaintiffs and the members of the Class have sustained damages and the proper measure of those damages;

(vi) Whether Plaintiffs and the Class are entitled to declaratory and injunctive relief;

(vii) Whether Plaintiffs and the Class are entitled to an award of punitive damages.

(c) The claims asserted by Plaintiffs are typical of the claims of the members of the Class. Plaintiffs and the Class they seek to represent, were all subjected to Farmers' common scheme to undervalue claims payments through the use of Colossus. The damages sustained by Plaintiffs and the Class were the direct result of Farmers' breach of contract and breach of their duty of good faith and fair dealing.

(d) Plaintiffs will fairly and adequately protect the interest of the Class. The interest of the Class are coincident with, and not antagonistic to, those of Plaintiffs. Furthermore, Plaintiffs have retained counsel who has substantial experience and success

in representing parties in class actions and insurance related litigation.

(e) This Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, because:

(i) There is no special interest by Class Members in individually controlling the prosecution of separate actions;

(ii) The damages sustained by individual Class Members may be relatively small and the expense and burden of individual litigation makes it impossible for the Class Members individually to address the wrongs done to them;

(iii) When the liability of Farmers has been adjudicated, claims of all Class Members can be administered efficiently and/or determined by the courts;

(iv) This action will promote an orderly and expeditious administration and adjudication of the Class claims, the economies of time, effort and resources will be fostered and uniformity of decisions will be insured;

(v) Without a class action, the Class Members will continue to suffer damages and Farmers' violations of contract and law will proceed without remedy while Farmers continues to reap and retain the substantial proceeds of its wrongful conduct;

(vi) There will be no difficulty in the management of this lawsuit as a class action.

34. Plaintiffs seek preliminary and permanent injunctive relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Farmers from using Colossus to determine the amount it will pay as damages on first party uninsured and underinsured claims. Plaintiffs also seek preliminary and permanent injunctive relief on behalf

of the entire Class, on grounds generally applicable to the entire Class, requiring Farmers to disgorge all ill gotten gains from its use of Colossus and to provide full restitution to Plaintiff and the Class Members of all monies wrongfully acquired by Farmers resulting from its wrongful conduct.

VI. FIRST CAUSE OF ACTION – Breach of Contract

35. Plaintiffs hereby adopt and re-allege each fact set forth in paragraphs 1-34 above as if fully set forth herein.

36. Farmers entered into a standard form automobile policy wherein Farmers agreed to pay to an insured person all sums which the insured person is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle because of bodily injury sustained by the insured person.

37. Farmers policies are standardized contracts which were drafted by Farmers and imposed upon its policyholders. Policyholders were not shown the policy prior to paying their premiums. Policyholders were given the choice only of adhering to Farmers' standard policy language or rejecting the policy. As such, the policies are contracts of adhesion.

38. All conditions precedent to Farmers' liability under its standardized automobile insurance policy have been performed including the payment of all premiums necessary to keep the policy in effect and the presentation of claims by insured persons for bodily injury damages under the uninsured or underinsured coverage.

39. Farmers materially breached the terms of its standardized policy contract with Plaintiffs and the Class, by, among other things, using the Colossus software to undervalue bodily injury damages and thereby make payments to Plaintiffs and the Class in an amount less than they were legally entitled to recover as damages from the owners or operators of an

uninsured or underinsured motor vehicle.

40. As a result of Farmers' material breach of its policy contract, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

VII. SECOND CAUSE OF ACTION – Breach of the Covenant of Good Faith and Fair Dealing (Insurance Bad Faith)

41. Plaintiffs hereby adopt and re-allege each fact set forth in paragraphs 1-40 above as if fully set forth herein.

42. Farmers, in its standardized form automobile insurance contracts agrees to pay to an insured person all sums which the insured person is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle because of bodily injury sustained by the insured person.

43. In all states in which Farmers does business there is an implied covenant of good faith and fair dealing that exists, as a matter of law, between Farmers and insured persons under the policies, the Class members herein. This implied covenant of good faith and fair dealing requires that neither party do anything to impair, frustrate or injure the rights of the other to receive the benefits of the insurance agreement.

44. Plaintiffs and the Class complied with their obligations of good faith and fair dealing when presenting their claims for uninsured and underinsured benefits.

45. In breach of its policy contracts and obligations to act in good faith and fair dealing with its insured persons, Farmers refused, without proper cause, to pay to its insured persons all sums which they were legally entitled to recover as damages from the owners or operators of uninsured or underinsured motor vehicles. Farmers knowingly and systematically underpaid Class Members uninsured and underinsured claims by tuning the Colossus software to

automatically decrease its payments by a predetermined percentage. In doing so, Farmers knowingly and intentionally failed to engage in proper claims handling practices and failed to compensate insured persons in an amount promised for losses covered under its automobile insurance policies.

46. Farmers engaged in these improper claims practices knowing that the Plaintiff and the Class would suffer financial harm. In doing so, Farmers deprived Plaintiffs and the Class of the very protection which they were promised, which they trusted Farmers to provide and for which there was paid substantial premiums. Farmers placed its interest in maximizing gains, and limiting disbursements above the interests of the Plaintiffs and the Class.

47. As a consequence of Farmers' breach of the implied covenant of good faith and fair dealing, Farmers has wrongfully profited and continues to wrongfully profit from the money saved by not paying insured persons all sums which they are legally entitled to recover as damages from the owners or operators of uninsured or underinsured motor vehicles.

48. By reason of the foregoing, Plaintiffs and the Class have sustained damages in an amount to be determined at trial.

49. Farmers' bad faith conduct was knowing, deliberate, wanton, wilful, outrageous, malicious, undertaken in conscious disregard of, and with reckless indifference to Plaintiffs' and the Class' interest, and otherwise of the character warranting the imposition of punitive damages.

VIII. THIRD CAUSE OF ACTION – Declaratory and Injunctive Relief

50. Plaintiffs hereby adopt and re-allege each fact set forth in paragraphs 1-49 above as if fully set forth herein.

51. Since Farmers continues to adjust uninsured and underinsured claims through the use of Colossus, Plaintiffs seek a judgment declaring that Farmers must cease using Colossus as

a basis for determining bodily injury damages in first party claims.

52. Plaintiffs seek injunctive relief enjoining Farmers from using Colossus on first party claims and requiring Farmers to disgorge all ill gotten profits realized from its undervaluation of claims through the use of Colossus and requiring Farmers to provide full restitution of all wrongfully acquired monies to Plaintiff and the Class.

53. Plaintiffs and the Class have no adequate remedy at law.

54. By reason of the foregoing Plaintiffs and the Class have been and continue to be irreparably harmed and are entitled to declaratory and injunctive relief as set forth above.

IX. Prayer for Relief

WHEREFORE, for the above stated reasons, Plaintiffs, Helen Sikes, Wayne Miller, and James Watts, individually and as class representatives on behalf of all other insured persons similarly situated, prays for judgment against Defendants, Farmers Group, Inc., Farmers Insurance Company, Inc., and Farmers Insurance Exchange as follows:

1. Judgment in excess of Ten Thousand Dollars (\$10,000.00) by reason of Farmers' breach of contract;
2. Judgment for nominal damages by reason of Farmers' breach of contract;
3. Judgment in excess of Ten Thousand Dollars (\$10,000.00) by reason of Farmers' breach of the duty of good faith and fair dealing;
4. Judgment for nominal damages by reason of Farmers' breach of the duty of good faith and fair dealing;
5. Judgment for punitive damages in excess of (Ten Thousand Dollars) \$10,000.00 against Farmers by reason of their conduct, which was knowing, deliberate, wanton, willful, outrageous, malicious, undertaken in conscious disregard of, and with reckless indifference to

the rights of Plaintiffs and the Class;

6. Judgment against Farmers for the amount that Farmers has saved/gained by using Colossus to evaluate the claims of insured persons, which will exceed Ten Thousand Dollars (\$10,000.00);

7. Declaration of the Court that by using the Colossus program to evaluate first party claims, Farmers has breached its contract of insurance;

8. Declaration of the Court that the Colossus program is an unfair, arbitrary and unreasonable method of evaluating a first party claim;

9. Declaration of the Court that the use of Colossus to evaluate and pay a first party claim when Farmers knew or reasonably should have known that Colossus was not a fair and reasonable method of evaluating an insured person's claim is a breach of Farmers' duty of good faith and fair dealings;

10. An Order from the Court prohibiting Farmers from using Colossus to evaluate first party claims;

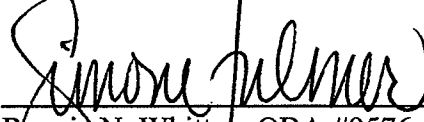
11. An Order of the Court prohibiting Farmers from using Colossus or any similar other program or method to contain their costs or reduce the amount paid on first party claims;

12. Declaration of the Court that Farmers Group, Inc. is the ultra-ego of Farmers Insurance Company and Farmers Insurance Exchange and declaring that the corporate veil be pierced and Farmers Group, Inc. is jointly liable for the acts of Farmers Insurance Company and Farmers Insurance Exchange;

13. For their costs expended herein, including reasonable attorneys' fees; and

14. Such other relief as the Court deems just and equitable.

Respectfully Submitted,



Reggie N. Whitten, OBA #9576
Douglas A. Terry, OBA #15855
Jason E. Roselius, OBA #16721
Simone Gosnell Fulmer, OBA #17037
Carin L. Marcussen, OBA #19869
WHITTEN NELSON MCGUIRE TERRY & ROSELIUS
Suite 400, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 239-2522
Facsimile: (405) 239-2573

-and-

Terry W. West, OBA #9496
Bradley C. West, OBA #12476
THE WEST LAW FIRM
124 West Highland
Shawnee, Oklahoma 74801
Telephone: (405) 275-0040
Facsimile: (405) 275-0052

-and-

Mark E. Bialick, OBA #771
Rodney D. Stewart, OBA #15105
DURBIN LARIMORE & BIALICK
920 North Harvey
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-9584
Facsimile: (405) 235-0551

-and-

Ron Parry, KBA #53750
David A. Futscher, KBA #82093
PARRY DEERING FUTSCHER & SPARKS
411 Garrard Street
P.O. Box 2618
Covington, Kentucky 41012
Telephone: (859) 291-9000

Facsimile: (859) 291-9300

-and

Michael Burrage, OBA #1350
BURRAGE LAW FIRM
Suite 100, First United Center
115 N. Washington
P. O. Box 1727
Durant, OK 74701
Phone: (580) 920-0700
Fax: (580) 920-0702

ATTORNEYS FOR PLAINTIFFS

**ATTORNEY LIEN CLAIMED!
JURY TRIAL DEMANDED!**

CERTIFICATE OF MAILING

This is to certify that on this 17 day of February, 2005 a true and correct copy of the above and foregoing was sent to the following counsel of record:

VIA HAND DELIVERY

Brooke S. Murphy
Timilia S. Rother
CROWE & DUNLEVY
20 North Broadway, Suite 1800
Oklahoma City, Oklahoma 73102

VIA HAND DELIVERY

Gary S. Chilton
HOLLADAY CHILTON & DEGUISTI
204 North Robinson, Suite 1550
Oklahoma City, Oklahoma 73102

