

NO. _____

MELINDA BALLARD,

Plaintiff

v.

FARMERS INSURANCE GROUP;
HILLCO PARTNERS LLC; and
BILL MILLER,

Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE TRAVIS COUNTY DISTRICT COURT:

Melinda Ballard, Plaintiff in the above-numbered and entitled cause, hereby files this Original Petition, complaining of and against Farmers Insurance Group, Hillco Partners LLC, and Bill Miller, Defendants in the above-captioned cause, and in support of her cause of action, Plaintiff would respectfully show as follows:

DISCOVERY CONTROL PLAN

I.

Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff hereby states that discovery in this case is intended to be conducted under Level 2 in accordance with Rule 190.3. Plaintiff reserves the right to later proceed under a Level 3 discovery control plan.

PARTIES, JURISDICTION AND VENUE

II.

Plaintiff, Melinda Ballard, is a natural person and resident of Travis County, Texas.

III.

Defendant, Farmers Insurance Group (hereinafter sometimes referred to as "Farmers"), is a private corporation or unincorporated association of insurance companies which is hereby sued in its common name, pursuant to Rule 28 of the Texas Rules of Civil Procedure. Service of process on Farmers may be effectuated by serving Farmers through its registered agent for service of citation and petition, pursuant to the Texas Rules of Civil Procedure, as follows:

Farmers Insurance Group
c/o Gerald Galvan, Registered Agent
100 Farmers Circle
Round Rock, TX 78728.

IV.

Defendant, Hillco Partners LLC (hereinafter sometimes referred to as "Hillco Partners"), is a domestic limited liability company, the principal office and place of business of which is located in Travis County, Texas. Service of process on Hillco Partners may be effectuated by serving Hillco Partners through its registered agent for service of citation and petition, pursuant to the Texas Rules of Civil Procedure, as follows:

Hillco Partners LLC
c/o Neal "Buddy" Jones, Registered Agent
823 Congress, Suite 900
Austin, TX 78701.

V.

Defendant, Bill Miller (hereinafter sometimes referred to as "Miller"), is an individual who is a resident of Travis County, Texas. Service of process on Miller may be effectuated by serving Miller with service of citation and petition, pursuant to the Texas Rules of Civil Procedure, as follows:

Bill Miller
Hillco Partners LLC
823 Congress, Suite 900
Austin, TX 78701.

VI.

Travis County is the proper county for the venue of this cause of action, pursuant to section 15.017 of the Civil Practice and Remedies Code.

NATURE OF THE CASE

VII.

Plaintiff's cause of action concerns claims for libel as a result of a blatantly defamatory and false statement which Defendants maliciously caused to be published in popular newspapers, including the Austin American-Statesman. The defamatory statement which is the subject of this cause of action is, in essence, an accusation that Melinda Ballard committed a crime in connection with the insurance claims which she made for water-related damage to her home under the homeowners insurance policy which Farmers had sold to Plaintiff. On information and belief, Defendants knowingly caused the publication of the defamatory statement in order to distract from the bad publicity which Farmers has been receiving as a result of its own illegal conduct - - involving bad faith and fraud against consumers - - in connection with insurance business related to homeowners' insurance claims in the State of Texas.

FARMERS' CONDUCT
VIS-A-VIS THE CONDUCT OF ITS AGENTS
AND THE VICARIOUS LIABILITY OF
FARMERS IN THIS MATTER

VIII.

With respect to the misconduct of Farmers which forms the basis for its liability herein, it is noted that the tortfeasor (Bill Miller) who made the defamatory statement which is the subject of this cause of action did so in the course and scope of his employment with Hillco Partners, and did so as a manager and vice-principal of Hillco Partners. Therefore, in essence, the defamatory statement was published by Hillco Partners, and Hillco Partners is vicariously liable with respect to Plaintiff's cause of action. Furthermore, it is noted that Hillco Partners published the defamatory statement as the "spokesperson" of Farmers, and did so at the behest of Farmers, with the knowledge of Farmers, in the interest of Farmers, and with the approval of Farmers. Therefore, Farmers is the culprit which is primarily liable - - vicariously or directly - - with respect to Plaintiff's claims herein.

PLAINTIFF'S CAUSE OF ACTION

IX.

In 1999, Melinda Ballard filed a lawsuit against Fire Insurance Exchange, a member of Farmers Insurance Group, alleging, among other things, that Farmers had breached its contract and engaged in unfair, deceptive and fraudulent acts and practices which had caused damages to Melinda Ballard and her family. Ms. Ballards' bad faith allegations against the insurance company stemmed from water damage which Farmers wrongfully failed to remedy, resulting in mold infestation of the Ballards' home. The litigation between Ms. Ballard and Farmers resulted from the insurance company's failure to comply with its obligations under the

homeowners insurance policy which Farmers had sold to the Ballards, and resulted from illegal practices by Farmers in connection with the valid claims for coverage which Ms. Ballard made under her insurance policy. Farmers responded to the Ballard lawsuit by denying allegations of misconduct, which ultimately necessitated a jury trial for the purpose of officially determining the truth of the issues concerning the dispute.

X.

In June of 2001, after considering all of the evidence, a Travis County jury returned a verdict, in favor of Melinda Ballard, finding that Farmers had engaged in unfair, deceptive, false, misleading, unconscionable, and fraudulent acts and practices in connection with its handling of the her claims and in connection with its obligations under the insurance contract, as well as the concomitant duties which the insurer owed under Texas law. The jury further found, by clear and convincing evidence, that the harm to Melinda Ballard, her family, and her home had been caused by fraud which was perpetrated by Farmers. What is more, the jury found that Melinda Ballard had not made any false representations whatsoever to the insurance company, and that the obligations which were owed by the insurance company were in no way excused by anything that Melinda Ballard had done or said or had failed to do or say in connection with the claims which were made under the homeowners policy. The result of the jury's findings was a final judgment which officially memorialized that Farmers had been guilty of fraud and other misconduct, that the Ballards had done nothing improper, and that there was no excuse for the illegal conduct which Farmers had perpetrated against the Ballard family.

XI.

The conduct of Farmers Insurance Group was so egregious and fraudulent toward Melinda Ballard and her family that the jury returned a verdict against the insurance company

in the amount of \$32,000,000.00, which included \$12,000,000.00 in punitive damages. The punitive damages award was a result of the insurance company's fraudulent conduct and illegal practices with respect to the way in which it handled the claims concerning the Ballards' home and the way in which the insurer treated its insureds with respect to those insurance claims.

XII.

The insurance company subsequently appealed the jury verdict and that appeal is currently pending before the Austin Court of Appeals. However, the jury verdict in favor of Melinda Ballard, in conjunction with the public's increasing familiarity with the rampantly greedy and illegal conduct of Farmers Insurance Group - - insofar as homeowners insurance underwriting and claims practices are concerned - - diminished that much more the credibility and popularity of Farmers Insurance Group. What is more, Melinda Ballard became an advocate for the homeowner and helps homeowners avoid costly and time intensive litigation and receive the coverage for which they paid Ballard's national organization also is a force behind federal and state legislation that protects the homeowner from insurance-committed bad faith and fraud by introducing legislation to eradicate the need for homeowners to be forced to file lawsuits, and punishes the handful of habitual offenders of State insurance statutes. As a result of Melinda Ballard's commencement of litigation against Farmers for failing to meet their legal obligations, Farmers Insurance Group hired the Austin-based public relations and governmental lobbying firm of Hillco Partners, including its principal, Bill Miller, to conduct public relations and damage control for the benefit of Farmers Insurance Group. In this regard, Farmers Insurance Group and Hillco Partners has acknowledged that Hillco Partners is the "company spokesman" for Farmers Insurance Group. Hillco Partners has served as a representative of Farmers on issues related to Melinda Ballard's lawsuit, as well as on issues

related to Farmers' illegal pricing practices, illegal claims practices, and homeowners coverage-related issues in Texas.

XIII.

In his capacity as a spokesman for Farmers Insurance Group, Bill Miller, an employee and principal of Hillco Partners, gave an interview to Claudia Grisales, a reporter with the Austin American-Statesman. Excerpts of that interview were published in the Sunday edition (October 20, 2002) of the American-Statesman. Furthermore, this newspaper article was published in at least one other big-city newspaper in Texas. At the time Miller gave this interview, he knew that he was being interviewed by a staff reporter of the Austin American-Statesman, and he knew that his statements were intended to be printed and published by the American-Statesman. During this interview, Miller disingenuously stated that Melinda Ballard was to blame for whipping up public hysteria and distorting the facts about mold to advance her own interests. Miller, acting as a henchman for Farmers, was quoted as stating that: “[Melinda Ballard] was expert at working the press on this and creating fear. She did a good job of frightening the public .” Miller was further quoted by the American-Statesman reporter as having specifically stated: “I think she hit the jackpot with the jury award on a fraudulent case.” This latter statement constitutes actionable defamation inasmuch as it is entirely false and defamatory, and was made with malice. To be sure, Melinda Ballard never engaged in any fraudulent conduct in connection with her case, or in connection with the underlying claims which led to her lawsuit against Farmers. Furthermore, this defamatory statement by Defendants constitutes libel and slander *per se* inasmuch as the statement falsely indicates that

Melinda Ballard committed a felony crime. This is due to the fact that any fraud, in connection with making, presenting, or pursuing an insurance claim under a property and casualty insurance policy (including a homeowners policy), constitutes the crime of insurance fraud, as prescribed by section 35.02 of the Texas Penal Code. Furthermore, the defamatory statement by Defendants constitutes statutory libel because it tends to injure Melinda Ballard's reputation and it exposes her to public contempt and ridicule, as well as impeaches her reputation for honesty and integrity. Defendants caused the statement to be made out of malice, and for the purpose of attempting to create a diversion with respect to the insurance company's horrific and greedy conduct as the insurance company flees the Texas homeowners' insurance market.

XIV.

Plaintiff has been injured as a direct and proximate result of the Defendants' publication of the defamatory statement. As a result of these injuries, Plaintiff seeks damages, from each defendant herein, jointly and/or severally, in an amount which is within the jurisdictional limit of the Court. However, as a national advocate for homeowners, Melinda Ballard intends to let the citizens of the State of Texas reap the benefits of this case by donating her share of any damages which the jury may award herein to the Texas Department of Insurance, for the purpose of funding an independent panel to review and make recommendations regarding property damage claims made by Texas homeowners with regard to claims that are disputed, delayed, or denied by such consumers' insurance carriers.

XV.

Furthermore, Plaintiff is entitled to an award of exemplary damages against Defendants, jointly and/or severally, in the greatest amount allowed by law. In this regard, Plaintiff will show that Defendants acted intentionally, knowingly, and/or with malice. Defendants acted

with a specific intent to cause injury to Melinda Ballard. Defendants did so out of retribution, in hope of discouraging others from pursuing legitimate insurance claims, and in hope of furthering damage control with regard to the declining reputation of Farmers Insurance Group. Defendants knew that the defamatory statement was false when it was made. Defendants knew that Melinda Ballard had not engaged in any fraudulent act or conduct in connection with presenting her insurance claim or in pursuing her rights in a lawsuit against the insurance company. To be sure, the jury in the underlying lawsuit found that Melinda Ballard had not engaged in any false representations to the insurance company. In fact, that same jury found that it was Farmers which had engaged in knowingly deceptive and fraudulent conduct toward Melinda Ballard.

XVI.

Defendants herein caused an outright lie to be told about Melinda Ballard to a major metropolitan newspaper which is distributed in the community in which Melinda Ballard and her family reside and in which her son goes to school. Defendants knew that the defamatory statement was a lie when it was uttered by Bill Miller on behalf of Farmers Insurance Group. Defendants knew that the defamatory statement accused Melinda Ballard of insurance fraud, and Defendants knew that insurance fraud constitutes a felony crime under the Texas Penal Code. (In fact, Farmers Insurance Group, in the regular course of business which it conducts in Texas, frequently issues written documents to its policyholders which contain warnings that insurance fraud is a crime.) Defendants knew that the defamatory statement would be published in the newspapers and knew that it would cause irreparable injury to Melinda Ballard. The corporate mentality of Farmers Insurance Group is such that the insurer believes that it can systematically lie and cheat; that it can walk all over the “little guys” with impunity; and that

it can defraud a policyholder and then defame that policyholder when she successfully challenges the insurer's fraudulent conduct. It is time for a jury to send a message to Farmers Insurance Group for the purpose of teaching Farmers Insurance Group a lesson which it has thus far simply refused to learn or accept, before Farmers Insurance Group sets its sights on other policyholders and before other insurers adopt the corporate mentality of Farmers Insurance Group.

JURY DEMAND

XVII.

Plaintiff, Melinda Ballard, hereby requests a jury trial and pays the requisite fee.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Melinda Ballard prays that Defendants be cited to appear and answer herein; that this case be tried by jury; and that Plaintiff have judgment against Defendants, Farmers Insurance Group; Hillco Partners LLC; and Bill Miller, jointly and/or severally, for all actual and compensatory damages, as well as exemplary damages in the greatest amount allowed by law (her recovery to be donated to the Texas Department of Insurance for the benefit of the homeowners and consumers of the State of Texas), pre-judgment and post-judgment interest at the highest rate allowed by law, court costs, and such other and further relief, both legal and equitable, general and special, to which Plaintiff may show herself justly entitled.

Respectfully submitted,

FEAZELL, ROSENTHAL & WATSON,

P.C.

By: _____

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